

Tab 1	SB 286 by Steube (CO-INTRODUCERS) Farmer, Book; (Identical to H 00665) Human Trafficking Education in Schools						
Tab 2	SB 492 by Young; (Similar to CS/H 00397) Public Records/Victim of Alleged Sexual Harassment/Identifying Information						
221378	D	S	RCS	CF, Young	Delete everything after	03/21	06:41 PM
Tab 3	SB 518 by Gibson; (Identical to H 00703) Elder Abuse Fatality Review Teams						
Tab 4	SB 520 by Gibson; (Similar to H 00705) Public Records And Public Meetings/Elder Abuse Fatality Review Teams						
Tab 6	CS/SB 788 by CJ, Clemens; (Compare to CS/H 00807) Marketing Practices for Substance Abuse Services						
Tab 7	SB 924 by Rouson; (Similar to H 00783) Children's Initiatives						
317632	A	S	L RCS	CF, Rouson	Delete L.24 - 47:	03/22	09:25 AM
Tab 8	SB 1092 by Gainer; (Similar to H 01003) Sheriffs Providing Child Protective Investigative Services						
644966	A	S	RCS	CF, Gainer	Delete L.38 - 81.	03/21	06:42 PM
Tab 9	SB 1094 by Gainer; (Identical to H 01051) Forensic Hospital Diversion Pilot Program						
Tab 10	SB 1392 by Latvala; (Compare to CS/H 01117) Temporary Assistance for Needy Families (TANF) Applicant Drug Screening						
473858	D	S	RCS	CF, Latvala	Delete everything after	03/23	04:06 PM
Tab 11	SB 1400 by Grimsley; (Compare to CS/H 01121) Child Welfare						
278262	A	S	L WD	CF, Grimsley	Delete L.192 - 193:	03/21	05:43 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Garcia, Chair
Senator Torres, Vice Chair

MEETING DATE: Tuesday, March 21, 2017

TIME: 4:00—6:00 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Garcia, Chair; Senator Torres, Vice Chair; Senators Artiles, Broxson, Campbell, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 286 Steube (Identical H 665)	Human Trafficking Education in Schools; Revising the required health education in public schools to include information regarding the dangers and signs of human trafficking, etc. CF 03/21/2017 Favorable ED AP RC	Favorable Yeas 6 Nays 0
2	SB 492 Young (Similar CS/H 397)	Public Records/Victim of Alleged Sexual Harassment/Identifying Information; Providing an exemption from public records requirements for information related to an allegation of sexual harassment that could lead to the identification of the alleged victim; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/21/2017 Fav/CS GO RC	Fav/CS Yeas 6 Nays 0
3	SB 518 Gibson (Identical H 703, Compare H 705, Linked S 520)	Elder Abuse Fatality Review Teams; Authorizing the establishment of elder abuse fatality review teams to review fatal and near-fatal incidents of elder abuse; exempting certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings; prohibiting a person from being required to testify regarding records or information produced or presented during meetings or other activities of a review team; assigning the review teams to the Department of Children and Families for administrative purposes, etc.	Temporarily Postponed
4	SB 520 Gibson (Similar H 705, Compare H 703, Linked S 518)	Public Records And Public Meetings/Elder Abuse Fatality Review Teams; Specifying that information obtained by an elder abuse fatality review team which is confidential or exempt from public records requirements retains its protected status; providing an exemption from public records requirements for identifying information of an elder abuse victim in records created by a review team; providing for future legislative review and repeal; providing statements of public necessity, etc.	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, March 21, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	Update on Sober Homes - Dave Aronberg, State Attorney, 15th Circuit		Presented
6	CS/SB 788 Criminal Justice / Clemens (Compare CS/H 807)	Marketing Practices for Substance Abuse Services; Authorizing the Office of Statewide Prosecution in the Department of Legal Affairs to investigate and prosecute patient brokering offenses; providing that an application for the disclosure of an individual's records may be filed as part of an active criminal investigation; prohibiting a person from knowingly and willfully making specified false or misleading statements or providing specified false or misleading information under certain circumstances, etc. CJ 03/06/2017 Fav/CS CF 03/21/2017 Favorable AP RC	Favorable Yeas 6 Nays 0
7	SB 924 Rouson (Similar H 783)	Children's Initiatives; Creating the Tampa Success Zone within the City of Tampa; providing for the projects to be managed by a corporation not for profit that is not subject to control, supervision, or direction by any agency of the state; providing that the area included in the success zone be determined based on the corporation's ability to provide programs and services to participants, etc. CF 03/21/2017 Fav/CS CA AHS AP	Fav/CS Yeas 6 Nays 0
8	SB 1092 Gainer (Similar H 1003)	Sheriffs Providing Child Protective Investigative Services; Requiring the Walton County Sheriff to have the responsibility to provide all child protective investigations in Walton County beginning with a specified fiscal year; requiring the state to disburse funds for providing child protective investigations in Walton County directly to the Walton County Sheriff; prohibiting such funds from being required to go through the Department of Children and Families, etc. CF 03/21/2017 Fav/CS AHS AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, March 21, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 1094 Gainer (Identical H 1051)	Forensic Hospital Diversion Pilot Program; Authorizing the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in Okaloosa County in conjunction with the First Judicial Circuit in Okaloosa County, etc. CF 03/21/2017 Favorable JU AP	Favorable Yeas 6 Nays 0
10	SB 1392 Latvala (Compare CS/H 1117)	Temporary Assistance for Needy Families (TANF) Applicant Drug Screening; Requiring the Department of Children and Families to perform a drug test on an applicant for TANF benefits with a prior felony conviction or history of arrests for a drug-related offenses; requiring the department to provide notice of the drug-screening policy; specifying that a child remains eligible for benefits if a parent fails a drug test, etc. CF 03/21/2017 Fav/CS AHS AP	Fav/CS Yeas 4 Nays 1
11	SB 1400 Grimsley (Compare CS/H 1121, CS/S 1044)	Child Welfare; Requiring a parent whose actions have caused harm to a child who is adjudicated to be dependent to submit to a substance abuse disorder assessment or evaluation and to participate in and comply with treatment and services; requiring the Department of Health to establish a hormonal long- acting reversible contraception (HLARC) program; requiring the Department of Children and Families to develop or adopt one or more initial screening assessment instruments to identify and determine the needs of, and plan services for, substance exposed newborns and their families, etc. CF 03/21/2017 Favorable AHS AP RC	Favorable Yeas 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 286

INTRODUCER: Senator Steube and others

SUBJECT: Human Trafficking Education in Schools

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.			ED	
3.			AP	
4.			RC	

I. Summary:

SB 286 adds information on the dangers and signs human trafficking to the instructional requirements for middle and high school students in the state's public school system.

The bill has an effective date of July 1, 2017 and would have a minimal fiscal impact.

II. Present Situation:

Human Trafficking

Children can be victims of human trafficking in two forms; commercial sexual exploitation and labor exploitation. In Florida, human trafficking is reported to the Child Abuse Hotline. Toll free national numbers to report human trafficking of children in Florida are relayed to the abuse hotline. Sex trafficking is defined as a commercial sex act induced by force, fraud or coercion or in which the person induced to perform such act is under 18.¹ Commercial sex acts include, but are not limited to prostitution and/or pornography as a means for the perpetrator to make money. The mere fact the victim is a child and the act meets the definition of a commercial sex act, makes the child a victim. Calls to the abuse hotline are investigated by the Department of Children and Families (department) or in certain counties, by the sheriff office.

In 2012 and 2014, the Legislature passed major legislation regarding the treatment of children who are victims of sex trafficking.² The new policy treated these children as victims rather than prosecuting them for prostitution.

¹ Department of Children and Families webpage. <http://www.myflfamilies.com/service-programs/human-trafficking/what-is-human-trafficking>. Last visited Feb. 27, 2017.

² Chapters 2012-105 and 2014-161, Laws of Florida

Once a call is made to the hotline, the department or certain sheriff office in counties where the sheriff conducts child abuse investigations, an investigation is made. If commercial sexual trafficking is suspected or verified, the department or sheriff office, conducts a multidisciplinary staffing on each case.³ The staffing includes local experts in child protection, child welfare, medical professionals and law enforcement to assess the needs of the child and determine if the victim needs placement in a residential home, or “safe house” pursuant to s. 39.524, F.S. Multidisciplinary staffing teams are also charged with assessing the local services available to victims of commercial sexual exploitation.⁴

Chapter 2014-161, Laws of Florida requires the Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an annual study on commercial sexual exploitation of children. The most recent report found that in calendar year 2015, there were 1,279 reports of human trafficking to the Child Abuse Hotline in Florida.⁵ Of those, 264 were verified. Of the verified cases, 123 were dependent children in state’s foster care while 141 were not dependent. OPPAGA reported that there is no data on the status or outcomes for the 141 victims not in foster care.

Educational Requirements

Florida law outlines specific content area instructional requirements, in addition to required core curricular content areas,⁶ for middle grades promotion and high school graduation.⁷

In addition to the required core curriculum, Florida law requires public school instruction in certain specified content areas, including, but not limited to:⁸

- The history and content of the Declaration of Independence.
- The history, meaning, significance, and effect of the provisions of the Constitution of the United States.
- The arguments in support of adopting our republican form of government.
- The elements of civil government.
- The history of the Holocaust.
- The history of African Americans.
- The elementary principles of agriculture.
- Kindness to animals.
- The history of the state.
- Comprehensive health education.
- A character-development program in kindergarten through grade 12.

³ s. 409.1754(2), F.S.

⁴ *Id.*

⁵ Office of Program Policy Analysis and Government Accountability report number 16-04. See <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=16-04>. Last visited Feb. 27, 2017.

⁶ Section 1003.41, F.S.

⁷ Each district school board is required to provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet the State Board of Education adopted standards in reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts. Section 1003.42(1), F.S.

⁸ Section 1003.42(2), F.S.

The law encourages the State Board of Education (State Board) to adopt standards and pursue assessment relating to the required instructional content.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 1003.42, F.S., regarding required instruction in the public school system. The revisions add information on the dangers and signs of human trafficking to the requirements of comprehensive health education. This new requirement can include information on the warning signs of human trafficking, terms used in trafficking, websites used by traffickers, and information on how a student can get help. A student may opt out of this instruction with a note from his or her parent.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill on the state's public schools would be minimal.

VI. Technical Deficiencies:

None.

⁹ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.42 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Steube

23-00472-17

2017286__

A bill to be entitled

An act relating to human trafficking education in schools; amending s. 1003.42, F.S.; revising the required health education in public schools to include information regarding the dangers and signs of human trafficking; authorizing a student to opt out of a specified portion of the health education under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historic accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; the dangers and signs of human trafficking; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00472-17

2017286__

violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse. The human trafficking education portion of the health curriculum shall include, but is not limited to, information on the warning signs of human trafficking, terms used by traffickers, red flags that would indicate a trafficker's malicious intent toward a student, websites that are popular with traffickers, and details on how a student may get help. A student may elect to opt out of the instruction of this portion of the health education by providing the school with a written note from his or her parent.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

3-21-17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

286

Bill Number (if applicable)

Topic Human Trafficking Education in Schools

Amendment Barcode (if applicable)

Name Natalie Macaire King

Job Title Student

Address 4841 Wilde Pointe Drive

Street

Sarasota

City

FL

State

34233

Zip

Phone 941-928-1250

Email nataliekingCAS@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17
Meeting Date

788
Bill Number (if applicable)

Topic _____

Name Nicole Fogarty

Job Title Legislative Affairs Director

Address 2300 Virginia Ave
Street
Ft. Pierce FL 34982
City State Zip

Phone 772-462-6406

Email ffogarty@stlucian.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing St. Lucie County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 Mch 17
Meeting Date

286
Bill Number (if applicable)

Topic Human Trafficking Ed in Schools

Name Barney Bishop III

Job Title Pres & CEO

Address 204 So. Monroe St.

Street

Tall

City

FL

State

32301

Zip

Phone 850.510.9922

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

3-21-17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

286

Bill Number (if applicable)

Topic Human Trafficking Education in Schools

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S Orange Ave

Street

Phone 850-567-8143

Orlando

City

FL

State

32806

Zip

Email amberk@floridafamily

action.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-17
Meeting Date

2866
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Chair

Address 404 E. Sixth Ave
Street

Phone 601-635-4168

Tallahassee, FL 32303
City State Zip

Email erin.choy@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17
Meeting Date

286
Bill Number (if applicable)

Topic Trafficking Education in Schools

Name Jan Edwards

Job Title Founder Paving the Way

Address 2268 Black Mangrove Dr
Street

Orlando
City

FL
State

32828
Zip

Phone 386 527 2452

Email janepavingtheway.co

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Paving the Way

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-17

Meeting Date

284

Bill Number (if applicable)

Topic Human Trafficking

Name Barbara Devane

Job Title MS

Address 625 E. Brevard St

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Tallahassee

City

FL 32308

State

Zip

Phone 850-251-4380

Email barbara.devane1@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/21/17
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 286

HB 665

Bill Number (if applicable)

Topic

Adding human trafficking to curriculum

Amendment Barcode (if applicable)

Name

Cynthia Schwartz Ebben

Job Title

Retired DSH Provider Liaison, Big Bend

Address

3980 Bobbin Brook Cir

Phone

850-509-0735

Street

City

Tallahassee FL 32312

State

Zip

Email

apn2012@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

2,500 members, Democratic Women's Club of Florida

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17

Meeting Date

286

Bill Number (if applicable)

Topic Human Trafficking Education

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns

Respect Life

Address 201 W Park Ave

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 286
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/ SB 492

INTRODUCER: Children, Families, and Elder Affairs and Senator Young

SUBJECT: Public Records/Victim of Alleged Sexual Harassment/Identifying Information

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 492 creates an exemption from the public records law for identifying information contained in state agency investigations of employee sexual harassment. The bill provides the exemption is subject to the Open Government Sunset Review Act and unless reviewed and saved from repeal through reenactment by the Legislature shall be repealed on October 2, 2022.

The bill is not expected to have a fiscal impact on the state and will become effective upon becoming law.

II. Present Situation:

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.¹

Harassment does not have to be of a sexual nature, however, it can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments

¹ U.S. Equal Employment Opportunity Commission website https://www.eeoc.gov/laws/types/sexual_harassment.cfm. Last visited March 15, 2017.

about women in general.² Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Florida law states that sexual harassment is a form of discrimination.³ The Department of Management Services, the state's personnel agency, has adopted rules on sexual harassment applicable to all executive agencies.⁴

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁵ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.⁶

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁷ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁸ The Public Records Act states that:

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁹

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.¹⁰ The Florida Supreme

² *Id.*

³ Section 110.1221, F.S.

⁴ 60L-40.001, Florida Administrative Code.

⁵ FLA. CONST., art. I, s. 24(a).

⁶ FLA. CONST., art. I, s. 24(a).

⁷ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁸ Public records laws are found throughout the Florida Statutes.

⁹ Section 119.01(1), F.S.

¹⁰ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”¹¹ A violation of the Public Records Act may result in civil or criminal liability.¹²

The Legislature may create an exemption to public records requirements.¹³ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁴ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁵ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁶

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁷ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁸

Currently, s. 119.071(2), F.S., provides public record exemptions for information related to agency investigations. Information that is exempt or confidential and exempt from public record requirements includes information related to complaints of discrimination, information related to complaints of misconduct, and information revealing the identity of a victim of certain crimes. There is not currently an exemption for information that could reveal the identity of an alleged victim of sexual harassment.

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

¹¹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹⁷ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁸ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁰ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:²¹

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²³

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to provide that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from public record requirements.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect personal identifying information of alleged victims because disclosure of the information could place them at risk of further harassment and retaliation. In addition, the potential for disclosure of identifying information could discourage alleged victims from reporting instances of alleged harassment.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

¹⁹ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(a), F.S.

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:**Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill exempts certain identifying information contained in state agency investigations of sexual harassment. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 21, 2017:

The committee substitute removes examples of personal identifying information that would be exempt from the public records law.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



221378

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Young) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (m) is added to subsection (2) of
section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of
public records.—

(2) AGENCY INVESTIGATIONS.—

(m) Personal identifying information of the alleged victim



221378

in an allegation of sexual harassment is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information of the alleged victim in an allegation of sexual harassment be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such information could harm alleged victims by placing them at risk of further harassment and retaliation. Additionally, the potential for disclosure of such information could create a disincentive for victims to report instances of harassment. The Legislature finds that the potential harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of such information.

Section 3. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public records; amending s.
119.071, F.S.; providing an exemption from public
records requirements for personal identifying
information of the alleged victim in an allegation of



221378

40 sexual harassment; providing for future legislative
41 review and repeal of the exemption; providing a
42 statement of public necessity; providing an effective
43 date.

By Senator Young

18-00386A-17

2017492__

A bill to be entitled

An act relating to public records; amending s.

119.071, F.S.; providing an exemption from public

records requirements for information related to an

allegation of sexual harassment that could lead to the

identification of the alleged victim; providing for

future legislative review and repeal of the exemption;

providing a statement of public necessity;

providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (m) is added to subsection (2) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(m) Information related to an allegation of sexual harassment which could lead to the identification of the alleged victim, including, but not limited to, the alleged victim's name, home address, telephone number, and electronic mail address, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information related to an allegation of sexual harassment which could lead to the identification of the alleged victim be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

18-00386A-17

2017492__

Constitution. The disclosure of such information could harm alleged victims by placing them at risk of further harassment and retaliation. Additionally, the potential for disclosure of such information could create a disincentive for alleged victims to report instances of alleged harassment. The Legislature finds that the potential harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of such information.

Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17

Meeting Date

492

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Samantha Ferrin

Job Title Deputy Director legislative & external affairs

Address 4050 Esplanade Way
Street

Phone _____

City

State

Zip

Email samantha.ferrin@
dms.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing DMS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 Mch 17
Meeting Date

492
Bill Number (if applicable)

Topic Public Records - Sexual Harassment

Name Barney Bishop III

Job Title Pres & CEO

Address 204 So. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-17
Meeting Date

492
Bill Number (if applicable)

Topic Pub Recs/victim of Alleged Sexual Harassment Amendment Barcode (if applicable)

Name Erin Choy

Job Title Chair

Address 404 E. Sixth Ave
Street

Phone 501-635-4168

Tallahassee FL 32303
City State Zip

Email erin.choy@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Unit Leagues of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 492
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 518

INTRODUCER: Senator Gibson

SUBJECT: Elder Abuse Fatality Review Teams

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Pre-meeting
2.			AHS	
3.			AP	
4.			RC	

I. Summary:

SB 518 authorizes the establishment of elder abuse fatality review teams to review fatal and near-fatal incidents of elder abuse. The bill also exempts certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings. The review teams are assigned to the Department of Children and Families (DCF).

The bill has an effective date of July 1, 2017, and the fiscal impact is unknown.

II. Present Situation:

There are currently no designated Elder Abuse Fatality Review Teams. The Adult Protective Services Program, under DCF, is responsible for preventing further harm to vulnerable adults who are victims of abuse, neglect, exploitation or self-neglect. This responsibility includes alleged deaths due to abuse or neglect.

The Florida Abuse Hotline, under DCF, screens allegations of adult abuse and/or neglect to determine whether the information meets the criteria of an abuse report. If the criteria is met, a protective investigation is initiated to confirm whether or not there is evidence that abuse has occurred; whether that is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard his or her well-being.¹ In 2016, Florida Adult Protective Services Program investigated 198 deaths in which the death was alleged to be due to abuse and/or neglect.²

¹Florida Department of Children and Families; Protecting Vulnerable Adults, *available at* <http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults> (last visited March 17, 2017).

² E-mail from Lindsey Perkins Zander, Department of Children and Families, dated March 17, 2017, and on file with the staff of the Senate Committee on Children, Families and Elder Affairs.

In section 415.1034, F.S., there is a list of persons that have an immediate, mandatory requirement to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited. Additionally, any person required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult dies as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, the appropriate criminal justice agency and to the department, notwithstanding the existence of a death certificate signed by a practicing physician.³

The department is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the matter.⁴ For each report it receives the department shall perform an onsite investigation to determine, among other things, if the person meets the definition of a vulnerable adult and, if so, if the person is in needs of services, whether there is an indication that the vulnerable adult was abused, neglected, or exploited, and if protective, treatment, and ameliorative services are necessary to safeguard and ensure the vulnerable adult's well-being.⁵

Section 415.1102, F.S., authorizes DCF to develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of its districts. Multidisciplinary adult protection team is defined as a team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly persons.⁶ The multidisciplinary teams may be composed of, but are not limited to, psychiatrists, psychologists, or other trained counseling personnel; law enforcement officers; medical personal with experience or training to provide health services; social workers who have experience or training in the prevention of abuse of the elderly or dependent persons; and public and professional guardians.⁷ The multidisciplinary team is to be utilized and convened to supplement the protective services activities of the protective services program of the department.⁸

III. Effect of Proposed Changes:

Section 1 creates s. 825.107, F.S., to authorize the creation of elder abuse fatality review teams. The review teams include numerous state and local agencies as well as community partners. The fatality review teams may be established at a local, regional, or state level to review fatal or near-fatal incidents of abuse, neglect or violence against the elderly. The review may include a review of events leading up to the incident, available community resources, current laws and policies and actions taken by systems and individuals related to the incident. The review team is provided the discretion to determine the number and type of incidents it wishes to review; however, the team is directed to make policy and other recommendations as to how incidents of elder abuse may be prevented.

³ Section 415.1034(2), F.S.

⁴ Section 415.104(1), F.S.

⁵ Section 415.104(2), F.S.

⁶ Section 415.1102(1), F.S.

⁷ Section 415.1102(2), F.S.

⁸ Section 415.1102(3), F.S.

This section includes language to prevent monetary liability on the part of any member of the elder abuse fatality review team. Additionally, all information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action. The elder abuse fatality review teams are assigned to DCF for administrative purposes.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Any public records or open meetings issues are addressed in SB 520.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The statutes currently allow for the creation of a multidisciplinary team to investigate reports of abuse, neglect and exploitation of the elderly. The proposed bill will create a team that will review fatal or near-fatal incidents of elders as a result of abuse or neglect.

C. Government Sector Impact:

Depending on whether the fatality review teams are established on a state, regional or local level, there may be an impact on law enforcement agencies, state agencies and local government agencies. The cost to DCF cannot be determined without knowing the type of administrative support or frequency of the review teams.

VI. Technical Deficiencies:

A definition of “near-lethal” should be added to offer guidance to the review teams.

VII. Related Issues:

Review teams will most likely need access to confidential information in order to complete its reviews. Section 415.107, F.S., makes reports and investigations of elder abuse and/or neglect confidential but the team will most likely need this information to complete its reviews.

VIII. Statutes Affected:

This bill creates section 825.107 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Gibson

6-00512A-17

2017518__

A bill to be entitled

An act relating to elder abuse fatality review teams; creating s. 825.107, F.S.; defining the term "elder abuse fatality review team"; authorizing the establishment of elder abuse fatality review teams to review fatal and near-fatal incidents of elder abuse; specifying the duties and purpose of review teams; providing immunity from liability for acts conducted in furtherance of a review team's duties; exempting certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings; prohibiting a person from being required to testify regarding records or information produced or presented during meetings or other activities of a review team; assigning the review teams to the Department of Children and Families for administrative purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 825.107, Florida Statutes, is created to read:

825.107 Elder abuse fatality review teams.—

(1) As used in this section, the term "elder abuse fatality review team" means an organization that may include, but is not limited to, the following persons or employees, members, or representatives of the following agencies, programs, industries, or organizations:

(a) Law enforcement agencies.

(b) The office of the state attorney.

(c) A medical examiner.

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(d) The office of court administration.

(e) The clerk of the court.

(f) Victim services programs.

(g) The State Long-Term Care Ombudsman Program.

(h) Adult protective services providers.

(i) Aging resource centers.

(j) The business community.

(k) County probation or corrections agencies.

(l) The Agency for Health Care Administration.

(m) Certified domestic violence centers.

(n) An advocacy organization for victims of sexual violence.

(o) A funeral director.

(p) A forensic pathologist.

(q) A geriatrician.

(r) A geriatric nurse.

(s) A geriatric psychiatrist or other individual licensed to offer mental health counseling.

(t) A hospital discharge planner.

(u) An emergency services provider, including firefighters, paramedics, emergency medical technicians, or other first responders.

(v) A health care provider, including a licensed physician or dentist.

(w) A public guardian.

(x) Any other persons who have knowledge regarding fatalities or nonlethal incidents of elder abuse, domestic violence, or sexual violence, including research, policy, law, and other matters connected with such incidents.

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(y) Other representatives as determined by the review team.

(2) An elder abuse fatality review team may be established at a local, regional, or state level in order to review fatal and near-fatal incidents of elder abuse and other acts of neglect or violence against the elderly. The review may include a review of events leading up to an incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team. The purpose of the team is to learn how to prevent elder abuse by intervening early and improving the response of an individual and the system to elder abuse. The team may determine the number and type of incidents it wishes to review and shall make policy and other recommendations as to how incidents of elder abuse may be prevented.

(3) (a) There may be no monetary liability on the part of, and a cause of action for damages may not arise against, any member of an elder abuse fatality review team or any person acting as a witness for, incident reporter to, or investigator for an elder abuse fatality review team for any act or proceeding undertaken or performed within the scope of the team's duties, unless such person acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) This subsection does not affect the provisions of s. 768.28.

(4) All information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action or

6-00512A-17

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administrative or disciplinary proceeding by any department or employing agency if the information or records arose out of matters that are the subject of evaluation and review by the elder abuse fatality review team. However, information, documents, and records otherwise available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by such a team. A person who has attended a meeting of an elder abuse fatality review team may not testify in any civil, criminal, administrative, or disciplinary proceeding as to any records or information produced or presented to the team during meetings or other activities authorized by this section. This subsection does not preclude any person who testifies before a team or who is a member of a team from testifying as to matters otherwise within his or her knowledge.

(5) The elder abuse fatality review teams are assigned to the Department of Children and Families for administrative purposes.

Section 2. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 520

INTRODUCER: Senator Gibson

SUBJECT: Public Records And Public Meetings/Elder Abuse Fatality Review Teams

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Pre-meeting
2.			GO	
3.			AP	
4.			RC	

I. Summary:

SB 520 provides that it is a public necessity that there be an exemption from public records requests for certain information obtained by an elder abuse fatality review team conducting a review. This includes information contained in a record created by an elder abuse fatality review team that reveals the identity of a victim of elder abuse.

Additionally, the bill provides that it is a public necessity that portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed be exempt from s. 286.011, F.S. and s. 24(b), Article I, of the Stat Constitution.

The bill provides the exemption is subject to the Open Government Sunset Review Act and unless reviewed and saved from repeal through reenactment by the Legislature shall be repealed on October 2, 2022.

There is an effective date of July 1, 2017, and there is no fiscal impact as a result of the legislation.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Public Meetings

Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, including meetings with or attended by any person elected to such board or commission at which official acts are to be taken are public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken at such meeting.¹⁵

The elder abuse fatality review teams would have access to and review confidential records, including possible information gathered in a criminal investigation, in order to carry out their duties. In Chapter 2000-219, Laws of Florida, the Legislature found, in the creation of domestic violence fatality review teams, that sensitive information concerning victims and family members would be discussed at team meetings and the harm that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.¹⁶ Additionally, the Legislature found that proceedings and meetings of any domestic violence fatality review team regarding domestic violence fatalities and their prevention during which the identity of the victim is discussed are exempt from s. 286.011 and s. 24(b) of Art. I of the State Constitution.¹⁷

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 286.011(1), F.S.

¹⁶ Chapter 2000-219, s. 2, Laws of Fla.

¹⁷ *Id.*

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:²⁰

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²²

III. Effect of Proposed Changes:

Section 1 amends s. 825.107, F.S., to provide that any information that is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is obtained by an elder abuse fatality review team conducting a review retains its confidential or exempt status when held by the review team. Additionally, any information created by a review team that reveals the identity of a victim of elder abuse is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

This section also provides that portions of meetings of a review team at which confidential or exempt information or the identify of a victim of elder abuse is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

¹⁸ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(a), F.S.

²¹ FLA. CONST., art. I, s. 24(c).

²² Section 119.15(7), F.S.

The exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 states that the Legislature finds it is a public necessity that the information that is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution remain confidential and exempt when held by an elder abuse fatality review team or contained in a record created by the review team that reveals the identity of a victim of elder abuse. Otherwise, sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination between the parties involved in the review would be hampered.

The Legislature further finds that it is a public necessity that portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. The failure to close public meetings at which confidential or exempt information or the identity of the victim of elder abuse are discussed would defeat the purpose of the public records exemption.

Section 3 provides an effective date to be the same date that SB 518 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the Legislature for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill provides that information that is confidential and exempt from s. 119.07(1), F.S., remain confidential and exempt when held by an elder abuse fatality review team. The bill also allows that a record created by a review team that identifies the victim of elder abuse remain confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

Portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identify of a victim of elder abuse is discussed would be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 825.107 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Gibson

6-00879-17

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A bill to be entitled

An act relating to public records and public meetings; amending s. 825.107, F.S., as created by SB __; specifying that information obtained by an elder abuse fatality review team which is confidential or exempt from public records requirements retains its protected status; providing an exemption from public records requirements for identifying information of an elder abuse victim in records created by a review team; providing an exemption from public meetings requirements for portions of review team meetings at which confidential or exempt information or the identity of an elder abuse victim is discussed; providing for future legislative review and repeal; providing statements of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (6), (7), and (8) are added to section 825.107, Florida Statutes, as created by SB __, to read:
825.107 Elder abuse fatality review teams.—

(6) (a) Any information that is confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and that is obtained by an elder abuse fatality review team conducting a review as provided in subsection (2) retains its confidential or exempt status when held by an elder abuse fatality review team.

(b) Any information contained in a record created by an elder abuse fatality review team which reveals the identity of a victim of elder abuse is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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(7) Portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(8) Subsections (6) and (7) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that information that is confidential or exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain confidential or exempt when held by an elder abuse fatality review team and that any information contained in a record created by an elder abuse fatality review team which reveals the identity of a victim of elder abuse be confidential and exempt from public records requirements. Otherwise, sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination among the parties involved in the elder abuse fatality review teams would be hampered. The harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

(2) The Legislature further finds that it is a public necessity that portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed be exempt from s. 286.011, Florida Statutes and s. 24(b), Article I of the State Constitution. The failure to close portions of meetings at

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62 which confidential or exempt information or the identity of a
63 victim of elder abuse are discussed would defeat the purpose of
64 the public records exemption. Further, the Legislature finds
65 that the exemption is narrowly tailored to apply to only certain
66 portions of meetings of elder abuse fatality review teams to
67 allow for public oversight.

68 Section 3. This act shall take effect on the same date that
69 SB __ or similar legislation takes effect, if such legislation
70 is adopted in the same legislative session or an extension
71 thereof and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 788

INTRODUCER: Criminal Justice Committee and Senator Clemens

SUBJECT: Marketing Practices for Substance Abuse Services

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	Fav/CS
2.	Crosier	Hendon	CF	Favorable
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 788 takes a comprehensive approach to the problem of fraudulent patient brokering and deceptive marketing practices in the business of substance use addiction services, particularly related to the economic relationship between service providers and “recovery residences.”

The bill creates new and amends existing criminal offenses (prohibited acts) related to patient brokering and marketing practices that create or increase fines and potential prison sentences. These offenses are added to the Criminal Punishment Code ranking chart for purposes of assigning sentencing points.

The bill provides assistance to law enforcement and prosecutors by:

- Extending the jurisdiction of the Office of the Statewide Prosecutor to investigate and prosecute patient brokering offenses;
- Adding patient brokering to the list of predicate offenses that may be prosecuted as RICO offenses which could result in higher penalties; and
- Adopting federal law with regard to the timing of law enforcement giving notice to a patient regarding obtaining the patient’s records pursuant to a court order.

Additionally, the bill requires that substance abuse treatment service provider personnel who provide direct clinical treatment services be certified through a Department of Children and Families-recognized certification process.

The bill becomes effective on July 1, 2017, and will have a fiscal impact on the Office of the Statewide Prosecutor and may have a fiscal impact on the Department of Children and Families.

II. Present Situation:

There has been an alarming increase of deaths from drug overdoses around the country and Florida has not escaped the trend. Total drug-related deaths increased by 13.9 percent in Florida (1,197 more) in 2015 when compared with 2014.¹ Heroin accounted for 733 deaths in Florida and increased by 79.7 percent between 2014 and 2015.²

The number of deadly heroin overdoses more than quadrupled in the United States from 2010 to 2015, as the price of heroin fell and its potency increased.³ In 2015, there were 12,989 deaths involving heroin across the country compared with 3,036 in 2010.⁴ There was a 346 percent increase in admissions nationally for opioid treatment from 2001 to 2011.⁵

In 2012, the rate of substance abuse or dependence among eighteen to twenty-five year olds was twice that of adults twenty-six and older.⁶ Florida is a destination for many young substance use addicts from all over the country who are seeking addiction treatment and recovery services.⁷

The typical model for substance addiction treatment and recovery consists of two basic stages. The length of time a patient spends in each stage varies, depending on the patient's needs and the protocol that will help the patient achieve a healthy outcome. The two stages are:

- Detoxification and services including in-patient treatment, if necessary; and
- Out-patient treatment coupled with a therapeutic residential recovery home or “sober home” environment.

A private industry has grown throughout the state to fill a void in programming, namely “recovery residences.”⁸ This component of treatment services is not currently state-licensed or

¹ Florida Department of Law Enforcement, Medical Examiners Commission, *2015 Annual Medical Examiners Commission Drug Report*, page ii, September 2016.

² *2015 Annual Medical Examiners Commission Drug Report*, at pages ii and 41.

³ David Beasley, *Deadly U.S. Heroin Overdoses Quadrupled in Five Years*, Reuters, February 24, 2017, available at <http://www.reuters.com/article/us-usa-heroin-idUSKBN1630EO> (last visited March 2, 2017).

⁴ *Id.*

⁵ Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality (2013); Treatment Episode Data Set (TEDS): 2001-2011.

⁶ Substance Abuse and Mental Health Services Administration (2013); Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings (HHS Publication No. SMA 13-4795, NSDUH Series H-46).

⁷ 15th Judicial Circuit, Presentment of the Palm Beach County, Florida, Grand Jury, Fall Term, 2016; *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry*, December 8, 2016, at page 5 (hereinafter referred to as the “Grand Jury Report”), citing Optum White Paper, *Young Adults and the Behavioral Health System*, 2014, page 4; and Palm Beach County Sober Homes Task Force Report, *Identification of Problems in the Substance Abuse Treatment and Recovery Residence Industries with Recommended Changes to Existing Laws and Regulations*, January 1, 2017, at page 1 (hereinafter referred to as the “Task Force Report”); these materials are available at <http://www.sa15.state.fl.us/stateattorney/SoberHomes/indexSH.htm> (last visited March 2, 2017).

⁸ Task Force Report, at page 6. “Recovery residence” is defined in s. 397.311(36), F.S., as “a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.”

regulated.⁹ Unfortunately, fraudulent activity in the recovery residence industry has become obvious to local communities, law enforcement, and prosecutors.¹⁰

In 2016, the State Attorney from the 15th Judicial Circuit was given the following task by the Legislature in the General Appropriations Act:

Conduct a study aimed to strengthen investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry. The state attorney shall coordinate with local and state law enforcement and regulatory agencies, the Department of Children and Families, the Florida Alcohol & Drug Abuse Association, and certifying entities of recovery residences and recovery residence administrators to identify statutory clarifications and enhancements to existing law to ensure that communities remain safe and individuals with substance use disorders are protected. The state attorney shall submit the study to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.¹¹

The State Attorney's assignment resulted in the creation of a Sober Homes Task Force (Task Force), and the convening of the Grand Jury. Both the Task Force and the Grand Jury issued reports making many of the same findings and suggesting similar solutions to the problems related to fraud in the substance use addiction treatment and recovery industry in Florida.¹²

Among the findings made by the Task Force and Grand Jury:

- Persons seeking substance use treatment and, often, their families are particularly vulnerable to predatory marketing practices.¹³

⁹ Sections 397.487 and 397.4871, F.S., provide for a voluntary certification program for recovery residences and recovery residence administrators offered through a "credentialing entity" approved by the Department of Children and Families, Office of Substance Abuse and Mental Health. See office website, available at <http://www.myflfamilies.com/service-programs/substance-abuse/recovery-residence> (last visited March 2, 2017). The current credentialing entity for recovery residences is the Florida Association of Recovery Residences, which reported the existence of 257 recovery residences in Florida as of March 1, 2017. See <http://farronline.org/>.

¹⁰ Grand Jury Report, at page 5; and Task Force Report, at pages 1 and 3. See also a recent press release from the U.S. Attorney's Office in the Southern District of Florida, *Six Defendants Charged in Health Care Fraud Scheme Involving Sober Homes and Alcohol and Drug Addiction Treatment Centers*, December 21, 2016, available at <https://www.justice.gov/usao-sdfl/pr/six-defendants-charged-health-care-fraud-scheme-involving-sober-homes-and-alcohol-and> (last visited March 2, 2017).

¹¹ See Specific Appropriation 884 (proviso), ch. 2016-66, L.O.F.

¹² See footnote 7.

¹³ "Some marketers create an online presence whereby potential patients and their families are willfully mislead and misdirected by unqualified individuals who offer diagnoses and placement recommendations. Often the result of these 'lead generators' is a referral to a provider in Florida." Task Force Report, page 4; "But when the person calls the number listed, the marketer silently routes the call to one of five different customers of the marketer. Some of those customers are simply other call centers or referral services. Others might be good or bad treatment centers in Florida that have paid the marketer for the referral. One of the problems with this practice is the monetary conflict of interest created once a 'lead' is already paid for. For example, when a treatment center pays \$1,000 for a lead, they are compelled to convince that caller to go to *their* treatment center, regardless of what the caller says or whether that particular treatment is in the caller's best interest. The level of care recommended will also be influenced by this monetary incentive. A person calling about outpatient treatment may be urged to get more intensive (and expensive) treatment under this scenario. The Grand Jury finds that deceptive

- Patients engaged in out-patient treatment typically need housing while in a treatment program and if the patient is far from home, unemployed, and unable to pay for basic needs, the patient may fall prey to patient brokering schemes.¹⁴
- Strengthening and modifying existing statutes, including patient brokering as a predicate RICO offense, creating new laws related to marketing practices, and amending existing law related to patient records, would be of benefit to state law enforcement and state attorneys as they investigate and prosecute these criminal enterprises.¹⁵

III. Effect of Proposed Changes:

The bill addresses two components of addiction treatment and recovery fraud, law enforcement and prosecution challenges surrounding those two types of fraud, and the certification of certain substance abuse treatment services provider personnel.

Marketing Practices

Although service providers are licensed through the Department of Children and Families (DCF), currently there is no real regulation or oversight of the marketing practices of service providers or of unlicensed recovery residences.¹⁶

Section 5 of the bill creates s. 397.488, F.S., which prohibits service providers, operators of recovery residences, or third parties providing any form of advertising or marketing services to either of those entities, from engaging in deceptive, false, or misleading marketing practices. These entities cannot:

- Make or provide false or misleading statements or information about their business in marketing, advertising, media, or on their websites.
- Include on their websites false information, links, or coding or activation that provides false information or redirects to another website.

The entities also cannot enter into a contract with a marketing provider who agrees to generate referrals or leads for patient placement through a call center or website. However, the entity can enter into such a contract if the entity discloses certain information to a prospective patient.

marketing practices like these are detrimental to a patient's chances of receiving quality care and the appropriate level of care." Grand Jury Report, at pages 13-16.

¹⁴ "A common practice within the industry in Florida is for the treatment provider to pay a weekly fee or kickback to the recovery residence, with the understanding that the recovery residence will allow the patient to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program. This practice was developed, in part, to ensure that out-of-state patients have a local place to live after they step down from inpatient to outpatient treatment. Most out-of-state patients who are attending intensive outpatient treatment are not locally employed, and while some are able to pay rent, many do not have the means. Without a local, stable address, it would be difficult, if not impossible, for a provider to treat the patient. This creates economic pressure for the provider to find a way to house the patient locally. Brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace. Some treatment providers and recovery residences offer incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more." Task Force Report, at pages 9-10. See Grand Jury Report, at pages 17-18.

¹⁵ Grand Jury Report, at pages 27-30.

¹⁶ Sections 397.401 and 397.487, F.S.

It also prohibits the entities from soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe in exchange for a patient referral or acceptance or acknowledgement of treatment. A violation of this provision is punishable as a felony patient brokering offense under s. 817.505, F.S. All other violations created in this section of the bill are punishable as first degree misdemeanors.¹⁷

Section 6 of the bill creates s. 817.0345, F.S., a third degree felony related to fraudulent marketing practices that prohibits knowingly and willfully making a materially false or misleading statement with the intent to induce another to seek treatment with a particular service provider.¹⁸

Patient Brokering

Section 817.505, F.S., is the current law that prohibits patient brokering. Substance abuse service providers, which includes out-patient treatment service providers licensed by the Department of Children and Families under ch. 397, F.S.,¹⁹ are prohibited from engaging in patient brokering. It is unlawful to:²⁰

- Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
- Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
- Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or
- Aid, abet, advise, or otherwise participate in the conduct prohibited under any of the above.²¹

Section 7 of the bill amends s. 817.505(1), F.S., to add the term “benefit” to the list of things a person, health care provider, or health care facility may not offer, pay, solicit, or receive:

- To induce the referral of a patient or patronage to or from a health care provider or facility;
- In return for a referral of a patient or patronage to or from a health care provider or facility; or
- In return for the acceptance or acknowledgment of treatment.

¹⁷ Pursuant to the bill, the punishment is up to a \$1,000 fine or court ordered restitution. Sections 775.083 and 775.089, F.S.

¹⁸ A third degree felony is punishable by a fine of up to \$5,000, a term of imprisonment up to 5 years, or both; a habitual offender may be sentenced to a term of imprisonment of up to 10 years. Sections 775.082, 775.083, and 775.084, F.S.

¹⁹ Substance abuse service providers are included under the term “health care provider or health care facility” in s. 817.505(2)(a), F.S.

²⁰ Section 817.505(4), F.S., sets forth third degree felony penalties for patient brokering offenses.

²¹ Section 817.505(1), F.S.

Section 7 also creates the following graduated monetary penalties and new second and first degree felony offenses for violations of s. 817.505, F.S., based upon the number of patients involved in the violation:

- If fewer than 10 patients are involved, the third degree felony²² penalties apply and a new \$50,000 fine is created by the bill;
- If 10-19 patients are involved, a new second degree felony²³ and a \$100,000 fine is created; and
- If 20 or more patients are involved, a new first degree felony²⁴ and a \$500,000 fine is created by the bill.

Section 9 of the bill amends the Criminal Punishment Code to rank the above-referenced offenses as a Level 4, Level 6, and Level 8, respectively, for the purpose of assigning sentencing points.²⁵

Section 3 of the bill amends s. 397.407(11), F.S., to address the economic relationship between licensed service providers and recovery residences.²⁶

The bill prohibits a service provider from referring a prospective patient to, or accepting a referral from, a recovery residence that is not in compliance with the voluntary certification program set forth in ss. 397.487 and 397.4871, F.S.²⁷

The bill does not require a recovery residence to refer any patient to a licensed service provider.

The bill does not prohibit a referral from a recovery residence to a licensed service provider as long as the residence, its owners, operators, and employees do not benefit from the referral. The prohibitions also do not apply to a licensed service provider under contract with a behavioral health managing entity.

Section 8 adds “patient brokering” to the list of crimes in the RICO statute.²⁸

²² Under the bill, the third degree felony is punishable by a fine of \$50,000 and a term of imprisonment up to 5 years; a habitual offender may be sentenced to a term of imprisonment of up to 10 years. Sections 775.082 and 775.084, F.S.

²³ Under the bill, the second degree felony is punishable by a fine of \$100,000 and a term of imprisonment up to 15 years; a habitual offender may be sentenced to a term of imprisonment of up to 30 years. Sections 775.082 and 775.084, F.S.

²⁴ Under the bill, the first degree felony is punishable by a fine of \$500,000 and a term of imprisonment up to 30 years; a habitual offender may be sentenced to a term of imprisonment for life. Sections 775.082 and 775.084, F.S.

²⁵ Assuming the defendant is before the court to be sentenced on one offense and assuming the defendant has no criminal history, the lowest permissible sentence for a Level 4 crime is probation or community control; for a Level 6 crime is probation or community control; and for a Level 8 crime is 34.5 months in prison. (Sentencing scoresheets computed by Criminal Justice Committee staff based upon s. 921.0024, F.S.).

²⁶ According to the Grand Jury Report, there is a “strong economic motive to promote a cycle of unnecessary treatment and/or relapse.” The Grand Jury heard testimony from “countless patients who have fallen prey to this cycle of dependence and its devastating impacts on recovery. It is not uncommon for a person to be in this cycle of treatment/relapse for years.” Grand Jury Report, at page 20.

²⁷ See footnote 9.

²⁸ Sections 895.01-895.06, F.S., make up the Racketeer Influenced and Corrupt Organization (RICO) Act. Prosecution under the RICO Act may result in higher criminal penalties.

Related Law Enforcement and Prosecution Challenges

Patient Records

Section 397.501(7), F.S., protects a substance abuse patient's right to confidentiality of his or her records. The records of service providers pertaining to the identity, diagnosis, prognosis, and service provision are confidential and exempt from public records disclosure requirements.²⁹

Section 397.501(7)(a)5., F.S., provides for "appropriate" disclosure without a patient's consent "[u]pon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself."

Section 397.501(7)(h), F.S., requires that "[t]he individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order."

It is the requirement of "adequate notice...and an opportunity to file a written response to the application" for the court order that has proven somewhat problematic for law enforcement investigators.³⁰

Section 4 of the bill creates s. 397.501(7)(h)2., F.S., which adopts the federal standard for patient notice.³¹ Federal case law interpreting the federal code reinforces the plain-reading of the code, that notice can be delayed until the order has been "implemented."³²

Office of the Statewide Prosecutor

Section 1 of the bill amends s. 16.56, F.S., to expand the jurisdiction of the Statewide Prosecutor to extend to the investigation and prosecution of patient brokering. This should aid local law enforcement and prosecutors because the Statewide Prosecutor has the ability to seamlessly move from one local jurisdiction to another in a large-scale, jurisdiction-crossing investigation.

Substance Abuse Service Provider Personnel

As provided in ch. 397, F.S., the substance abuse services chapter, "service provider personnel" or "personnel" includes all owners, directors, chief financial officers, staff, and volunteers, including foster parents, of a service provider.³³

²⁹ Section 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

³⁰ Grand Jury Report, at pages 31-32.

³¹ 42 C.F.R. 2.66 provides that "upon implementation" of the court order, the patient and other parties must be given an opportunity to seek revocation or amendment of the order "limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order."

³² *U.S. v. Shinderman*, 515 F.3d 5 (1st Cir., 2008).

³³ Section 397.311(43), F.S.

Section 397.321(13), F.S., currently requires the DCF to ensure that service provider personnel have background checks as required in ch. 397, F.S., and meet the minimum standards.

Section 397.451, F.S., lists the persons who must have a background check, including:

- All owners, directors, and chief financial officers of service providers; and
- All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services.

However, service providers that are exempt from licensing provisions of ch. 397, F.S., are exempt from personnel fingerprinting and background check requirements, except as otherwise provided in s. 397.451, F.S.

Section 2 of the bill amends s. 397.321, F.S., to require the DCF to ensure that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process. Licensed physicians, physician assistants, advanced registered nurse practitioners, psychologists, mental health counselors, and others are exempted from this requirement.

The bill becomes effective on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates new felony offenses and increases potential prison sentences within existing offenses. The Criminal Justice Impact Conference, which provides the final,

official estimate of the prison bed impact, if any, of legislation providing for criminal penalties, has not yet reviewed the bill.

The Office of the Statewide Prosecutor indicates that the bill could slightly increase the workload for the office and would result in the need for one to two additional prosecutors. The total cost is \$194,120 of which \$181,770 is recurring costs.³⁴

Whether the Department of Children and Families will realize a fiscal impact by gaining the responsibility of ensuring that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process is unknown as of the date of this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 397.321, 397.407, 397.501, 817.505, 895.02, and 921.0022.

This bill creates the following sections of the Florida Statutes: 397.488 and 817.0345.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 6, 2017:

The CS:

- Amended s. 397.321, F.S., in a new Section 2 of the bill, to require the Department of Children and Families to ensure that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process.
- Amended Section 3 of the bill to clarify that the bill does not require a recovery residence to refer any patient to a licensed service provider.
- Amended Section 4 of the bill to make technical changes putting the new statutory language in s. 397.488, F.S., clarifying what information must be given to prospective patients, and removing the requirement that the Department of Business and Professional Regulation license the marketing entities addressed in the bill.

³⁴ E-mail dated March 3, 2017, from Office of the Attorney General staff to Criminal Justice Committee staff, on file with Criminal Justice Committee staff.

- Made technical changes removing “s. 775.083,” F.S., a reference to potential fines a person may be sentenced to pay, because the fines are specifically set forth in Section 6 of the bill.
- Amended the Criminal Punishment Code ranking chart found in s. 921.0022, F.S., in Section 9 of the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

By the Committee on Criminal Justice; and Senator Clemens

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A bill to be entitled

An act relating to marketing practices for substance abuse services; amending s. 16.56, F.S.; authorizing the Office of Statewide Prosecution in the Department of Legal Affairs to investigate and prosecute patient brokering offenses; amending 397.321, F.S.; requiring the Department of Children and Families to ensure that substance abuse service provider personnel providing direct clinical treatment services are certified through a department-recognized certification process; exempting specified licensed individuals from certification; amending s. 397.407, F.S.; revising the requirements for the referral of patients to, and the acceptance of referrals from, a recovery residence; specifying that certain referrals are not prohibited; providing applicability; clarifying that such referrals are not required; amending s. 397.501, F.S.; providing that an application for the disclosure of an individual's records may be filed as part of an active criminal investigation; authorizing a court to approve an application for the disclosure of an individual's substance abuse treatment records without providing express notice of the application to the individual or identified parties with an interest in the records if the application is filed as part of an active criminal investigation; providing that upon implementation of the order granting such application, the individual and identified parties with an interest in the records must be afforded an opportunity to seek revocation or

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amendment of that order; creating s. 397.488, F.S.; providing legislative findings; prohibiting service providers, operators of recovery residences, and certain third parties from engaging in specified marketing practices; providing penalties; creating s. 817.0345, F.S.; prohibiting a person from knowingly and willfully making specified false or misleading statements or providing specified false or misleading information under certain circumstances; providing penalties; amending s. 817.505, F.S.; providing that it is unlawful for a person to offer or pay, or solicit or receive, benefits under certain circumstances; providing fines and penalties; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity"; amending s. 921.0022, F.S.; ranking offenses; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery,

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carjacking, ~~and~~ home-invasion robbery, and patient brokering;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

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13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 2. Subsection (21) of section 397.321, Florida Statutes, is added to read:

397.321 Duties of the department.—The department shall:
(21) Ensure that substance abuse service provider personnel who provide direct clinical treatment services as defined in s. 397.311(25)(a) are certified through a department-recognized certification process. A physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or an advanced registered nurse practitioner licensed under part I of chapter

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117 464 is exempt from the requirements of this subsection.

118 Section 3. Subsection (11) of section 397.407, Florida
119 Statutes, is amended to read:

120 397.407 Licensure process; fees.—

121 (11) Effective July 1, 2017 ~~2016~~, a service provider
122 licensed under this part may not refer a prospective, current,
123 or discharged patient to, or accept a referral from, a recovery
124 residence unless the recovery residence holds a valid
125 certificate of compliance as provided in s. 397.487 and is
126 actively managed by a certified recovery residence administrator
127 as provided in s. 397.4871 ~~or the recovery residence is owned~~
128 ~~and operated by a licensed service provider or a licensed~~
129 ~~service provider's wholly owned subsidiary.~~ For purposes of this
130 subsection, the term "refer" means to inform a patient by any
131 means about the name, address, or other details of the recovery
132 residence. However, this subsection does not require a licensed
133 service provider to refer any patient to a recovery residence.
134 This subsection does not require a recovery residence to refer
135 any patient to a licensed service provider. This subsection does
136 not prohibit a referral by a recovery residence to a licensed
137 service provider when the recovery residence, including its
138 owners, operators, and employees, do not benefit, directly or
139 indirectly, from the referral, and does not apply to a licensed
140 service provider under contract with a managing entity as
141 defined in s. 394.9082.

142 Section 4. Paragraphs (g) and (h) of subsection (7) of
143 section 397.501, Florida Statutes, are amended to read:

144 397.501 Rights of individuals.—Individuals receiving
145 substance abuse services from any service provider are

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146 guaranteed protection of the rights specified in this section,
147 unless otherwise expressly provided, and service providers must
148 ensure the protection of such rights.

149 (7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

150 (g) An order authorizing the disclosure of an individual's
151 records may be applied for by any person having a legally
152 recognized interest in the disclosure which is sought. The
153 application may be filed alone separately or as part of a
154 pending civil action or an active criminal investigation in
155 which it appears that the individual's records are needed to
156 provide evidence. An application must use a fictitious name,
157 such as John Doe or Jane Doe, to refer to any individual and may
158 not contain or otherwise disclose any identifying information
159 unless the individual is the applicant or has given a written
160 consent to disclosure or the court has ordered the record of the
161 proceeding sealed from public scrutiny.

162 (h) 1. For applications filed alone or as part of a pending
163 civil action, the individual and the person holding the records
164 from whom disclosure is sought must be given adequate notice in
165 a manner which will not disclose identifying information to
166 other persons, and an opportunity to file a written response to
167 the application, or to appear in person, for the limited purpose
168 of providing evidence on the statutory and regulatory criteria
169 for the issuance of the court order.

170 2. Applications filed as part of an active criminal
171 investigation may, in the discretion of the court, be granted
172 without notice. Although no express notice is required to the
173 agents, owners, and employees of the treatment provider or to
174 any patient whose records are to be disclosed, upon

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implementation of an order so granted, any of these persons must be afforded an opportunity to seek revocation or amendment of the order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the order.

Section 5. Section 397.488, Florida Statutes, is created to read:

397.488 Prohibition of deceptive marketing practices.—

(1) The Legislature recognizes that consumers of substance abuse treatment have disabling conditions and that such consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence may not engage in any of the following marketing practices:

(a) Making a false or misleading statement or providing false or misleading information about the provider's or operator's or third party's products, goods, services, or geographical locations in its marketing, advertising materials, or media or on its website.

(b) Including on its website false information, electronic links, or coding or activation that provides false information or that surreptitiously directs the reader to another website.

(c) Soliciting, receiving, or making an attempt to solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging

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or making an attempt to engage in a split-fee arrangement in return for a referral or an acceptance or acknowledgment of treatment from a service provider or recovery residence.

(d) Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or a web-based presence, unless the service provider or the operator of the recovery residence discloses the following to the prospective patient so that the patient can make an informed health care decision:

1. Information about the specific licensed service providers or recovery residences that are represented by the marketing provider and pay a fee to the marketing provider, including the identity of such service providers or recovery residences; and

2. Clear and concise instructions that allow the prospective patient to easily access lists of licensed service providers and recovery residences on the department website.

(2) In addition to any other punishment authorized by law, a person or entity that knowingly and willfully violates paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) commits a misdemeanor of the first degree, punishable as provided in s. 775.083 or s. 775.089. A violation of paragraph (1)(c) is a violation of the prohibition on patient brokering and may subject the party committing the violation to criminal penalties under s. 817.505.

Section 6. Section 817.0345, Florida Statutes, is created to read:

817.0345 Prohibition of fraudulent marketing practices.—It

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is unlawful for any person to knowingly and willfully make a materially false or misleading statement or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed service provider, as defined in chapter 397, in marketing, advertising materials, or other media or on a website with the intent to induce another person to seek treatment with that service provider. A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsections (1) and (4) of section 817.505, Florida Statutes, are amended to read:

817.505 Patient brokering prohibited; exceptions; penalties.—

(1) It is unlawful for any person, including any health care provider or health care facility, to:

(a) Offer or pay a ~~any~~ commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient ~~patients~~ or patronage to or from a health care provider or health care facility;

(b) Solicit or receive a ~~any~~ commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient ~~patients~~ or patronage to or from a health care provider or health care facility;

(c) Solicit or receive a ~~any~~ commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or

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in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or

(d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).

(4)(a) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, ~~s. 775.083~~, or s. 775.084, and a fine of \$50,000.

(b) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 10 or more patients but fewer than 20 patients, commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084, and a fine of \$100,000.

(c) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 20 or more patients, commits a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084, and a fine of \$500,000.

Section 8. Paragraph (a) of subsection (8) of section

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895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

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12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human

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trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, ~~and~~ credit card crimes, and patient brokering.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public

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office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 9. Paragraphs (c), (d), (f), and (h) of subsection (3) of section 921.0022, Florida Statutes, are amended to read: 921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information

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			from police reports.
403	316.066	3rd	Unlawfully obtaining or
	(3) (b) - (d)		using confidential crash
			reports.
404	316.193(2) (b)	3rd	Felony DUI, 3rd conviction.
405	316.1935(2)	3rd	Fleeing or attempting to
			elude law enforcement
			officer in patrol vehicle
			with siren and lights
			activated.
406	319.30(4)	3rd	Possession by junkyard of
			motor vehicle with
			identification number plate
			removed.
407	319.33(1) (a)	3rd	Alter or forge any
			certificate of title to a
			motor vehicle or mobile
			home.
408	319.33(1) (c)	3rd	Procure or pass title on
			stolen vehicle.
409	319.33(4)	3rd	With intent to defraud,
			possess, sell, etc., a

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			blank, forged, or
			unlawfully obtained title
			or registration.
410	327.35(2) (b)	3rd	Felony BUI.
411	328.05(2)	3rd	Possess, sell, or
			counterfeit fictitious,
			stolen, or fraudulent
			titles or bills of sale of
			vessels.
412	328.07(4)	3rd	Manufacture, exchange, or
			possess vessel with
			counterfeit or wrong ID
			number.
413	376.302(5)	3rd	Fraud related to
			reimbursement for cleanup
			expenses under the Inland
			Protection Trust Fund.
414	379.2431	3rd	Taking, disturbing,
	(1) (e) 5.		mutilating, destroying,
			causing to be destroyed,
			transferring, selling,
			offering to sell,
			molesting, or harassing
			marine turtles, marine

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			turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
415	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
416	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
417	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
418	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
419	501.001(2) (b)	2nd	Tampers with a consumer product or the container using materially

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			false/misleading information.
420	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.
421	624.401(4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
422	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
423	697.08	3rd	Equity skimming.
424	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
425	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
426	806.10(2)	3rd	Interferes with or assaults firefighter in performance

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			of duty.
427	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
428	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
429	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
430	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
431	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
432	817.233	3rd	Burning to defraud insurer.
433	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.

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	591-02128-17		2017788c1
434	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
435	817.236	3rd	Filing a false motor vehicle insurance application.
436	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
437	817.413(2)	3rd	Sale of used goods as new.
438	817.505(4)	3rd	Patient brokering.
439	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
440	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
441	831.29	2nd	Possession of instruments

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 for counterfeiting driver
 licenses or identification
 cards.

442 838.021(3)(b) 3rd Threatens unlawful harm to
 public servant.

443 843.19 3rd Injure, disable, or kill
 police dog or horse.

444 860.15(3) 3rd Overcharging for repairs
 and parts.

445 870.01(2) 3rd Riot; inciting or
 encouraging.

446 893.13(1)(a)2. 3rd Sell, manufacture, or
 deliver cannabis (or other
 s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3.,
 (2)(c)5., (2)(c)6.,
 (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4)
 drugs).

447 893.13(1)(d)2. 2nd Sell, manufacture, or
 deliver s. 893.03(1)(c),
 (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5.,

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 (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or
 (4) drugs within 1,000 feet
 of university.

448 893.13(1)(f)2. 2nd Sell, manufacture, or
 deliver s. 893.03(1)(c),
 (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or
 (4) drugs within 1,000 feet
 of public housing facility.

449 893.13(4)(c) 3rd Use or hire of minor;
 deliver to minor other
 controlled substances.

450 893.13(6)(a) 3rd Possession of any
 controlled substance other
 than felony possession of
 cannabis.

451 893.13(7)(a)8. 3rd Withhold information from
 practitioner regarding
 previous receipt of or
 prescription for a
 controlled substance.

452

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	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
453			
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
454			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
455			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
456			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a

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			controlled substance.
457			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
458			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
459			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
460			
	944.47	3rd	Introduce contraband to correctional facility.
	(1)(a)1. & 2.		
461			
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
462			
	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment

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facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

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517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1) (c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2) (c)	3rd	Battery on a person 65 years of age or older.

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	784.081(3)	3rd	Battery on specified official or employee.
478			
	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
479			
	784.083(3)	3rd	Battery on code inspector.
480			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
481			
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
482			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
483			
	787.04(3)	3rd	Carrying child beyond state lines with

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02128-17		2017788c1
			criminal intent to avoid producing child at custody hearing or delivering to designated person.
484			
	787.07	3rd	Human smuggling.
485			
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
486			
	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
487			
	790.115(2)(c)	3rd	Possessing firearm on school property.
488			
	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
489			
	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02128-17		2017788c1
			battery.
490	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
491	810.06	3rd	Burglary; possession of tools.
492	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
493	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
494	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
495	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
496	<u>817.505(4)(a)</u>	<u>3rd</u>	<u>Patient brokering.</u>

	591-02128-17		2017788c1
497	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
498	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
499	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
500	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
501	837.02(1)	3rd	Perjury in official proceedings.
502	837.021(1)	3rd	Make contradictory statements in official proceedings.

503	591-02128-17		2017788c1
504	838.022	3rd	Official misconduct.
505	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
506	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
507	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
508	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
509	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
	847.0135(5)(c)	3rd	Lewd or lascivious

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02128-17		2017788c1
			exhibition using computer; offender less than 18 years.
510	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
511	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
512	914.14(2)	3rd	Witnesses accepting bribes.
513	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
514	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
515	918.12	3rd	Tampering with jurors.
516	934.215	3rd	Use of two-way

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communications device to
facilitate commission of
a crime.

517

518

519

520

(f) LEVEL 6

Florida

Felony

Statute

Degree

Description

521

316.027(2)(b)

2nd

Leaving the scene of a
crash involving serious
bodily injury.

522

316.193(2)(b)

3rd

Felony DUI, 4th or
subsequent conviction.

523

400.9935(4)(c)

2nd

Operating a clinic, or
offering services
requiring licensure,
without a license.

524

499.0051(2)

2nd

Knowing forgery of
transaction history,
transaction information,
or transaction
statement.

525

499.0051(3)

2nd

Knowing purchase or

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receipt of prescription
drug from unauthorized
person.

526

499.0051(4)

2nd

Knowing sale or transfer
of prescription drug to
unauthorized person.

527

775.0875(1)

3rd

Taking firearm from law
enforcement officer.

528

784.021(1)(a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

529

784.021(1)(b)

3rd

Aggravated assault;
intent to commit felony.

530

784.041

3rd

Felony battery; domestic
battery by
strangulation.

531

784.048(3)

3rd

Aggravated stalking;
credible threat.

532

784.048(5)

3rd

Aggravated stalking of
person under 16.

533

784.07(2)(c)

2nd

Aggravated assault on

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02128-17		2017788c1
			law enforcement officer.
534	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
535	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
536	784.081 (2)	2nd	Aggravated assault on specified official or employee.
537	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
538	784.083 (2)	2nd	Aggravated assault on code inspector.
539	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
540	790.115 (2) (d)	2nd	Discharging firearm or

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	591-02128-17		2017788c1
			weapon on school property.
541	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
542	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
543	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
544	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
545	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
546			

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02128-17		2017788c1
547	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
548	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
549	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
550	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
551	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
552	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

	591-02128-17		2017788c1
553	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
554	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
555	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
556	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
557	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
558	<u>817.505 (4) (b)</u>	<u>2nd</u>	<u>Patient brokering; 10 or more patients.</u>
559	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.

	591-02128-17		2017788c1
560	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
561	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
562	827.03(2)(c)	3rd	Abuse of a child.
563	827.03(2)(d)	3rd	Neglect of a child.
564	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
565	836.05	2nd	Threats; extortion.
566	836.10	2nd	Written threats to kill or do bodily injury.
567	843.12	3rd	Aids or assists person

	591-02128-17		2017788c1
568			to escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
569	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
570	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
571	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
572	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an

591-02128-17		2017788c1	
			inmate or offender on community supervision, resulting in great bodily harm.
573	944.40	2nd	Escapes.
574	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
575	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
576	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
577			
578			
579	(h) LEVEL 8		
580			
	Florida	Felony	
	Statute	Degree	Description
581	316.193	2nd	DUI manslaughter.

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591-02128-17		2017788c1	
			(3)(c)3.a.
582	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
583	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
584	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
585	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
586	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
587	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding

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	591-02128-17		2017788c1
			\$20,000, but less than \$100,000.
588	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
589	777.03(2)(a)	1st	Accessory after the fact, capital felony.
590	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
591	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate

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	591-02128-17		2017788c1
			a felony not enumerated in s. 782.04(3).
592	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
593	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
594	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
595	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
596	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
597	787.06(3)(e)1.	1st	Human trafficking for labor and services by the

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	591-02128-17		2017788c1
			transfer or transport of a child from outside Florida to within the state.
598	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
599	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
600	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
601	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender

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	591-02128-17		2017788c1
			does not use physical force likely to cause serious injury.
602	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
603	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
604	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
605	800.04(4)(b)	2nd	Lewd or lascivious battery.
606	800.04(4)(c)	1st	Lewd or lascivious

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02128-17		2017788c1
			battery; offender 18 years of age or older; prior conviction for specified sex offense.
607	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
608	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
609	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
610	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
611	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
612			

	591-02128-17		2017788c1
	812.13(2)(b)	1st	Robbery with a weapon.
613	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
614	<u>817.505(4)(c)</u>	<u>1st</u>	<u>Patient brokering; 20 or more patients.</u>
615	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
616	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
617	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
618	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the

	591-02128-17		2017788c1
			property incurs financial loss as a result of the false instrument.
619	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
620	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
621	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
622	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
623	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
624	837.02(2)	2nd	Perjury in official

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	591-02128-17		2017788c1
			proceedings relating to prosecution of a capital felony.
625	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
626	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
627	860.16	1st	Aircraft piracy.
628	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
629	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
630	893.13(6)(c)	1st	Possess in excess of 10

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			grams of any substance specified in s. 893.03(1)(a) or (b).
631	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
632	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
633	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
634	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
635	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
636	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400

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			grams.
637	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
638	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
639	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
640	893.135 (1)(h)1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
641	893.135 (1)(j)1.b.	1st	Trafficking in 1,4- Butanediol, 5 kilograms or more, less than 10 kilograms.
642	893.135	1st	Trafficking in

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	591-02128-17		2017788c1
	(1) (k) 2.b.		Phenethylamines, 200 grams or more, less than 400 grams.
643	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
644	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
645	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
646	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
647	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding

	591-02128-17		2017788c1
			\$20,000, but less than \$100,000.
648	896.104 (4) (a) 2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
649			
650	Section 10. This act shall take effect July 1, 2017.		

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/17

Meeting Date

SB 788

Bill Number (if applicable)

Topic Sober Homes

Name Al Johnson

Job Title Deputy State Attorney

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17
Meeting Date

788
Bill Number (if applicable)

Topic MARKETING PRACTICES FOR SUBSTANCE ABUSE SVCS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

Address 115 S. ANDREWS AVE
Street

Phone 954-253-7320

FT. LAUDERDALE
City

FL
State

33301
Zip

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing BROWARD COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17
Meeting Date

788
Bill Number (if applicable)

Topic Marketing Practices for Substance Abuse Sres.

Name Devon West

Amendment Barcode (if applicable)

Job Title Legislative Affairs Director.

Address 2401 SE Monterey Ave.
Street

Shuttl, FL
City State

Phone 321-243-2270

Email dwest@martin.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Martin County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17
Meeting Date

SB 788
Bill Number (if applicable)

Topic Sober Homes

Name Rebecca DelaRosa

Job Title Legislative Director

Address 301 N Olive Ave, 1101
Street

West Palm Beach, FL 33401
City State Zip

Phone 850.284.7235

Email rdelarsa@pbgov.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 Mch 17
Meeting Date

788
Bill Number (if applicable)

Topic Marketing Practices - Sober Homes

Name Barney Bishop III

Amendment Barcode (if applicable)

Job Title Pres & CEO

Address 204 So. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart + Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17
Meeting Date

SB 788
Bill Number (if applicable)

Topic Sober Homes

Name Dave Aronberg

Job Title State Attorney, 4th Circuit

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-17
Meeting Date

788
Bill Number (if applicable)

Topic _____
Name Richard Pinsky

Amendment Barcode (if applicable) _____

Job Title _____

Address 106 E. College #1200
Street
Tallahassee FL
City State Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Lake Worth

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/17

Meeting Date

788

Bill Number (if applicable)

Topic

MARKETING PRACTICES FOR SUBSTANCE

Name

LISA HURLEY

Amendment Barcode (if applicable)

ABUSE SERV.

Job Title

Address

Street

311 E. PARK AVE

City

JANNAHASSIE FL

State

3230

Zip

Phone

850.224.5081

Email

lhurley@smithbryan
andmyers.com

Speaking:



For



Against



Information

☒ Waive Speaking.
(The Chair will read this information into the record.)



In Support



Against

Representing

FLORIDA ASSOC OF COUNTIES

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/17

Meeting Date

788

Bill Number (if applicable)

Topic Substance Abuse Certification

Name Neal McGarry

Amendment Barcode (if applicable)

Job Title CEO

Address 1715 S. Gadsden St

Street

Tallahassee FL

City

State

Zip

Phone 850-222-6314

Email namcgarry@flcertificationboard.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Certification Board

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

March 21, 2017

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

788

Bill Number (if applicable)

Topic Marketing Practices for Substance Abuse Services

Amendment Barcode (if applicable)

Name Cary Glickstein

Job Title Mayor of Delray Beach

Address 100 NW 1st Ave.

Street

Phone 561-243-7000

Delray Beach

FL

33444

Email glickstein@mydelraybeach.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Delray Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

3-21-17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 788

Bill Number (if applicable)

Topic Substance Abuse/MARKETING

Amendment Barcode (if applicable)

Name MARK FONTAINE

Job Title Executive Director

Address 2868 Mahan Drive

Phone 878-2196

Street

Tallahassee

City

FL

State

32308

Zip

Email mfontaine@fadaa.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA BEHAVIORAL HEALTH ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE: Children, Families, and Elder Affairs
ITEM: CS/SB 788
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/ SB 924

INTRODUCER: Children, Families, and Elder Affairs and Senator Rouson

SUBJECT: Children's Initiatives

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			CA	
3.			AHS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 924 codifies the Tampa Sulphur Springs Neighborhood Promise Zone and the Overtown Children and Youth Coalition in Miami that are currently in of existence and have been designated by the Ounce of Prevention Fund (Ounce) as a Florida children's initiative pursuant to section 409.147, F.S.

The bill provides that the initiatives are subject to Florida public records laws, public meeting laws, and procurement laws, and that the initiatives are designed to encompass an area large enough to include all necessary components of community life, but small enough to reach every member of each neighborhood who wishes to participate.

The bill is anticipated to have no fiscal impact on the state and has an effective date of July 1, 2017.

II. Present Situation:

Harlem Children's Zone

The Harlem Children's Zone (HCZ) began in 1970 as an organization working with young children and their families as the city's first truancy-prevention program.¹ In the early 1990s, the HCZ ran a pilot project that brought a range of support services to a single block. The idea was to address all the problems that poor families were facing including crumbling apartments, failing schools, violent crime, and chronic health problems.²

Believing that for children to do well, their families have to do well, and for families to do well, their community must do well, the HCZ works to strengthen families as well as empowering them to have a positive impact on their children's development. The two fundamental principles of the HCZ are to help kids in a sustained way, starting as early in their lives as possible, and to create a critical mass of adults around them who understand what it takes to help children succeed.³

The HCZ Project began as a one-block pilot in the 1990s, then following a 10-year business plan to ensure its best-practice programs were operating as planned, it expanded to 24 blocks, then 60 blocks, then ultimately 97 blocks. The HCZ became a model among nonprofits that began carefully evaluating and tracking the results of their work. Those evaluation results enabled staff to see if programs were achieving their objectives and to take corrective actions if they were not.⁴

Children's Zones in Florida

Using the Harlem Children's Zone as a model, the Legislature created children's zones in Florida in 2008.⁵ The stated policy and purpose for the zones was:

It is the policy of this state to provide the necessary means to assist local communities, the children and families who live in those communities, and the private sector in creating a sound educational, social, and economic environment. To achieve this objective, the state intends to provide investments sufficient to encourage community partners to commit financial and other resources to severely disadvantaged areas. The purpose of this section is to establish a process that clearly identifies the severely disadvantaged areas and provides guidance for developing a new social service paradigm that systematically coordinates programs that address the critical needs of children and their families and for directing efforts to rebuild the basic infrastructure of the

¹ Harlem Children's Zone, available at <http://www.hcz.org/index.php/about-us/history>. (last visited March 13, 2017). The organization was then known as the Rheedlen Centers for Children and Families.

² *Id.*

³ Harlem Children's Zone, available at <http://www.hcz.org/index.php/about-us/the-hcz-project> (last visited March 13, 2017).

⁴ *Id.*

⁵ Chapter 2008-96, Laws of Fla. In 2009, the term "children's zone" was changed to "children's initiative." Shortly after the 2008 legislation was signed into law, the HCZ notified the Florida Legislature that they had trademarked the term "children's zone" and the state was no longer able to use the term. Chapter 2009-43, Laws of Fla.

community. The Legislature, therefore, declares the creation of children's zones, through the collaborative efforts of government and the private sector, to be a public purpose.⁶

The 2008 legislation and the amending 2009 legislation relating to children's initiatives also contained the following provisions:⁷

- Created a nominating process for areas within communities to be designated as children's zones, provides for the creation of a planning team, a strategic community plan, and focus areas to be included in the plan;
- Required the creation of a not for profit corporation to implement and govern a designated children's zone;
- Created a ten-year project within the Liberty City neighborhood in Miami to be known as the Miami Children's Initiative (MCI); and
- Required the Department of Children and Families to contract with an existing private nonprofit corporation, incorporated for certain specified purposes, to implement the newly created Miami Children's Initiative.⁸

Florida children's initiatives were created to assist disadvantaged areas within the state in creating a community-based service network that develops, coordinates, and provides quality education, accessible health care, youth development programs, opportunities for employment, and safe and affordable housing for children and families living within its boundaries. There are currently three Florida children's initiatives that have been recognized in statute; the Miami Children's Initiative, Inc., the New Town Success Zone in Jacksonville, and the Parramore Kidz Zone in Orlando.⁹

Miami Children's Initiative

The idea for the Miami Children's Initiative dates back to 2006, when a group of Liberty City community leaders, local politicians and residents came together to try and determine possible solutions to perceived problems in the community. Liberty City was once a thriving neighborhood for many African Americans, but the high concentration of low-income housing projects, the exit of the area's businesses, increased joblessness, low performing schools, growing poverty, crime, juvenile delinquency, drugs and poor health had eroded the quality of life.¹⁰

Creation of the MCI in 2008 brought residents and local business people, as well as leaders in health care, education and human services, together to begin to formulate the foundation for this

⁶ *Id.*

⁷ Section 409.147, F.S., provides that a county or municipality or other designated area may apply to the Ounce to designate an area as a children's initiative. The area must first adopt a resolution stating that the area has issues related to poverty, that changes are necessary for the area to improve, and that resources are necessary for revitalization of the area. The county or municipality must then establish a children's initiative planning team and develop and adopt a strategic community plan. Once a county or municipality has completed these steps, they must create a not-for-profit corporation to facilitate fundraising and secure broad community ownership of the children's initiative. The Ounce is a private, nonprofit corporation dedicated to shaping prevention policy and investing in innovative prevention programs that provide measurable benefits to Florida's children, families and communities.

⁸ Chapter 2009-43, Laws of Fla.

⁹ Section 409.147, F.S.

¹⁰ Miami Children's Initiative, available at: <http://www.iamlibertycity.org/> (last visited March 15, 2017).

community-wide initiative. Today, the initiative has grown to include early childhood programs, K-12 programs, student enrichment and development programs, an asthma initiative, a fresh food co-op, community vegetable gardens and a gym and fitness facility.¹¹

New Town Success Zone

After a trip by city officials to Harlem and a review of a number of Jacksonville neighborhoods, the New Town community was selected by community leadership of Jacksonville in 2008 as the site for a Florida children's initiative. In 2009, a strategic plan was developed and work began on the New Town Success Zone.¹² The initiative's mission is to provide a place-based continuum of services from prenatal to college, the military or some form of postsecondary training for the children and their families living in the neighborhood.¹³ In the first five year report to the community, the New Town Success Zone has reported higher FCAT scores, an improvement in school promotion rates, and a reduction in violent crimes, theft and truancy since 2008.¹⁴

Parramore Kidz Zone

The Parramore Kidz Zone (PKZ) was launched by the City of Orlando on July 1, 2006, as part of a comprehensive effort to revitalize Orlando's highest crime, highest poverty neighborhood. The Parramore Kidz Zone replicates some aspects of the Harlem Children's Zone to create positive child-rearing conditions that will result in lower teen pregnancy rates, improved school performance, and decreased juvenile crime and child abuse rates. The Parramore Kidz Zone was implemented by a coalition of nonprofit organizations and neighborhood residents and was designated by the Ounce as a Florida children's initiative in June 2009.¹⁵ The initiative was designed to invest in those things that make a difference in children's lives, such as quality early childhood education, after school programs, programs that build family economic success, youth development programs for teenagers, access to health care, and mentoring.¹⁶

Since 2006, program evaluators have documented a 61% decline in juvenile arrests, a 56% decline in teen pregnancies, and a 38% decline in child abuse cases in the neighborhood since PKZ started, as well as across-the-board increases in the percentage of elementary, middle and high school students performing at grade level in math and reading. Every year the number of Parramore youth who attend college increases. Today, 70 PKZ youth are in college, all of whom are the first generation in their families to attend.¹⁷

¹¹ Miami Children's Initiative, available at: <http://www.iamlibertycity.org/our-work/our-work/> (last visited March 15, 2017).

¹² The New Town Success Zone, available at: <http://jaxkids.org/afterschool-summer/new-town-success-zone/>. Also see: New Town Success Zone Five Years Later, available at: <http://www.metrojacksonville.com/article/2013-may-new-town-success-zone-five-years-later> (last visited March 15, 2017).

¹³ *Id.*

¹⁴ New Town Success Zone, Five Year Report to the Community, available at: https://issuu.com/jermynshannonel/docs/newtown_5yr_report (last visited March 14, 2017).

¹⁵ The Ounce of Prevention Fund of Florida, Parramore Kidz Zone, available at: https://www.ounce.org/fci_communities.html (last visited March 14, 2017).

¹⁶ City of Orlando, Parramore Kidz Zone, available at: <http://www.cityoforlando.net/parramorekidzzone/> (last visited March 13, 2017).

¹⁷ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 409.147, F.S., relating to children's initiatives, to add the Tampa Sulphur Springs Neighborhood of Promise Success Zone and the Overtown Children and Youth Coalition as entities designated by the Ounce of Prevention Fund as children's initiatives.

The bill provides that the initiatives are subject to Florida public records laws, public meeting laws, and procurement laws, and that the initiatives are designed to encompass an area large enough to include all necessary components of community life, but small enough to reach every member of each neighborhood who wishes to participate.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.147 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 21, 2017:

The committee substitute:

- Changes the name of the Tampa Success Zone to the Tampa Sulphur Springs Neighborhood of Promise Success Zone; and
- Adds the Overtown Children and Youth Coalition as a children's initiative.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



317632

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Rouson) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 24 - 47
and insert:

(11) CREATION OF THE TAMPA SULPHUR SPRINGS NEIGHBORHOOD OF
PROMISE (SSNOP) SUCCESS ZONE.—

(a) There is created within the City of Tampa in
Hillsborough County a 10-year project that shall be managed by
an entity organized as a corporation not for profit that is
registered, incorporated, organized, and operated in compliance



317632

with chapter 617. The Tampa SSNOP Success Zone is not subject to control, supervision, or direction by any department of the state in any manner. The Legislature determines, however, that, public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature declares that the corporation is subject to chapter 119, relating to public records, chapter 286, relating to public meetings and records, and chapter 287, relating to procurement of commodities or contractual services.

(b) This initiative is designed to encompass an area that is large enough to include all of the necessary components of community life, including, but not limited to, schools, places of worship, recreational facilities, commercial areas, and common space, yet small enough to allow programs and services to reach every member of the neighborhood who is willing to participate in the project.

(12) CREATION OF THE OVERTOWN CHILDREN AND YOUTH COALITION.—

(a) There is created within the City of Miami in Miami-Dade County a 10-year project that shall be managed by an entity organized as a corporation not for profit that is registered, incorporated, organized, and operated in compliance with chapter 617. The Overtown Children and Youth Coalition is not subject to control, supervision, or direction by any department of the state in any manner. The Legislature determines, however, that public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature declares that the corporation is subject to chapter 119, relating to public records, chapter 286,



317632

relating to public meetings and records, and chapter 287,
relating to procurement of commodities or contractual services.

(b) This initiative is designed to encompass an area that
is large enough to include all of the necessary components of
community life, including, but not limited to, schools, places
of worship, recreational facilities, commercial areas, and
common space, yet small enough to allow programs and services to
reach every member of the neighborhood who is willing to
participate in the project.

(13)~~(11)~~ IMPLEMENTATION.—

(a) The Miami Children's Initiative, Inc., the New Town
Success Zone, the Overton Children and Youth Coalition, and the
Parramore Kidz Zone, and the Tampa SSNOP Success Zone have been
designated as Florida Children's Initiatives

=====
And the directory clause is amended as follows:

Delete lines 20 - 21

and insert:

Florida Statutes, is redesignated as subsection (13) and
amended, and new subsections (11) and (12) are added to that
section, to

=====
And the title is amended as follows:

Delete lines 3 - 15

and insert:

409.147, F.S.; creating the Tampa Sulphur Springs
Neighborhood of Promise Success Zone within the City



317632

of Tampa in Hillsborough County and the Overtown
Children and Youth Coalition within the City of Miami
in Miami-Dade County; providing for the projects to be
managed by corporations not for profit that are not
subject to control, supervision, or direction by any
department of the state; providing legislative intent;
requiring the corporations to be subject to state
public records and public meeting requirements and to
requirements for the procurement of commodities and
contractual services; providing that the success zone
and the coalition are designed to encompass areas
large enough to include certain components but small
enough to allow programs and services to reach
participants; providing implementation of the
coalition and the success zone; providing an effective
date.

By Senator Rouson

19-01188-17

2017924__

1 A bill to be entitled
2 An act relating to children's initiatives; amending s.
3 409.147, F.S.; creating the Tampa Success Zone within
4 the City of Tampa; providing for the projects to be
5 managed by a corporation not for profit that is not
6 subject to control, supervision, or direction by any
7 agency of the state; providing legislative intent;
8 requiring the corporation to be subject to state
9 public records and public meeting requirements and to
10 requirements for the procurement of commodities and
11 contractual services; providing that the area included
12 in the success zone be determined based on the
13 corporation's ability to provide programs and services
14 to participants; providing for implementation of the
15 success zone; providing an effective date.

16 Be It Enacted by the Legislature of the State of Florida:

17 Section 1. Present subsection (11) of section 409.147,
18 Florida Statutes, is redesignated as subsection (12) and
19 amended, and a new subsection (11) is added to that section, to
20 read:

21 409.147 Children's initiatives.—

22 (11) CREATION OF THE TAMPA SUCCESS ZONE.—

23 (a) There is created within the City of Tampa in
24 Hillsborough County a 10-year project that must be managed by an
25 entity organized, registered, incorporated, and operated in
26 compliance with chapter 617. The Tampa Success Zone is not
27 subject to control, supervision, or direction by any agency of
28
29

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

19-01188-17

2017924__

30 the state. The Legislature intends that, in the interest of
31 sound public policy, the corporation operate in an open and
32 accessible manner consistent with its public purpose, and, to
33 that end, the corporation is subject to chapter 119, relating to
34 public records; chapter 286, relating to public meetings and
35 records; and chapter 287, relating to procurement of commodities
36 or contractual services.

37 (b) The Tampa Success Zone must encompass an area that is
38 large enough to include all of the necessary components of
39 community life, including, but not limited to, schools, places
40 of worship, recreational facilities, commercial areas, and
41 common space, yet small enough to allow participation in
42 programs by and delivery of services to everyone in the success
43 zone who wishes to participate.

44 (12)(11) IMPLEMENTATION.—

45 (a) The Miami Children's Initiative, Inc., the New Town
46 Success Zone, ~~and~~ the Parramore Kidz Zone, and the Tampa Success
47 Zone have been designated as Florida Children's Initiatives
48 consistent with the legislative intent and purpose of s. 16,
49 chapter 2009-43, Laws of Florida, and as such shall each assist
50 the disadvantaged areas of the state in creating a community-
51 based service network and programming that develops,
52 coordinates, and provides quality education, accessible health
53 care, youth development programs, opportunities for employment,
54 and safe and affordable housing for children and families living
55 within their boundaries.

56 (b) In order to implement this section for the Miami
57 Children's Initiative, Inc., the Department of Children and
58 Families shall contract with a not-for-profit corporation, to

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

19-01188-17

2017924__

59 work in collaboration with the governing body to adopt the
60 resolution described in subsection (4), to establish the
61 planning team as provided in subsection (5), and to develop and
62 adopt the strategic community plan as provided in subsection
63 (6). The not-for-profit corporation is also responsible for the
64 development of a business plan and for the evaluation, fiscal
65 management, and oversight of the Miami Children's Initiative,
66 Inc.

67 Section 2. This act shall take effect July 1, 2017.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 924
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/ SB 1092

INTRODUCER: Children, Families, and Elder Affairs and Senator Gainer

SUBJECT: Sheriffs Providing Child Protective Investigative Services

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The bill authorizes the Walton County Sheriff to assume responsibility for child protective investigations beginning with the 2017-2018 fiscal year.

The bill has an effective date of upon becoming law and may have a fiscal impact to the state as sheriff office child protection investigations have been more costly than those conducted by the department.

II. Present Situation:

Background

Child protective investigation units are responsible for receiving and responding to reports of child abuse and neglect, which involves and whether the report meets the criteria to be accepted for a protective investigation, gathering information, and making a determination of whether child maltreatment occurred or the child is at risk of abuse or neglect.

The Department of Children and Families (DCF or department) has been authorized to enter into contracts with county sheriffs to provide child protective investigations since 1998.¹ Currently, the department is responsible for performing child protective investigations in 61 counties statewide. Sheriff's offices in the remaining six counties, are responsible for performing child

¹ Section 39.3065, F.S.

protective investigations.² Department employees in Walton County are responsible for conducting child protective investigations.³

The department is also required to enter into agreements with the jurisdictionally responsible county sheriffs' offices and local police departments that will assume the lead in conducting any potential criminal investigations arising from allegations of child abuse, abandonment, or neglect.⁴ The following types of calls to the hotline are automatically transferred to the appropriate county sheriff's office:

- Reports of known or suspected child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in s. 39.01, F.S.;
- Reports involving juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior; and
- Reports of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely under s. 827.04(3), F.S.⁵

All child protective investigations, regardless of the entity administering this function, must be done in accordance with state and federal laws and regulations. The county sheriffs must conduct investigations, at a minimum, in accordance with the performance standards and outcome measures established by the legislature for protective investigations conducted by the department. Each individual child protective investigator must complete, at a minimum, the training provided to and required of protective investigators employed by the department.⁶

Funds for providing child protective investigations must be identified in the annual appropriation made to the department, which shall award grants to the respective sheriffs' offices. Funds for child protective investigations may not be integrated into the sheriffs' regular budgets. Budgetary data and other data relating to the performance of child protective investigations must be maintained separately from all other records of the sheriffs' offices and reported to the department as specified in the grant agreement.⁷

The sheriffs' grants are funded with a mixture of types of funding, including state General Revenue and the following federal funds: Welfare Transition Trust Fund (Temporary Assistance for Needy Families Block Grant), Social Services Block Grant Trust Fund, Child Welfare Training Trust Fund, Federal Grants Trust Fund, and Title IV-E funds. Federal funds are provided to the department as the agency of record for the State of Florida. The department is required to complete a number of reports to the federal government, including certifications as to how the funding is spent and that the expenses meet federal guidelines and sufficient state matching funds are available. These funds, according to federal guidelines, must be appropriated to the agency of record.⁸

² Those county sheriffs are Broward, Hillsborough, Manatee, Pasco, Pinellas and Seminole.

³ Staff in Walton County include 12 positions that are responsible for child protective investigative functions.

⁴ Section 39.306, F.S.

⁵ Section 39.201, F.S.

⁶ Section 39.3065, F.S.

⁷ *Id.*

⁸ The Department of Children and Families, 2017 Agency Legislative Bill Analysis for SB 1092, February 27, 2017.

The department is required to submit an annual report regarding quality performance, outcome-measure attainment, and cost efficiency to the President of the Senate, the Speaker of the House of Representatives, and to the Governor no later than January 31 of each year the sheriffs are receiving general appropriations to provide child protective investigations.⁹

Numbers of Investigations¹⁰

The following table shows the number of child protective investigations performed by each sheriffs' office and the department over a three year period.

County Sheriff	FY 2013-14	FY 2014-15	FY 2015-16
	Number of Investigations	Number of Investigations	Number of Investigations
Broward	13,509	14,293	13,785
Hillsborough	11,539	11,686	11,913
Manatee	4,125	4,087	4,265
Pasco	5,115	5,261	5,462
Pinellas	9,365	9,338	9,100
Seminole	4,007	3,967	4,016
All Sheriffs	47,660	48,632	48,541
Department	136,212	137,872	142,680

Performance

DCF and sheriffs generally use similar investigative processes and procedures, although the higher level of funding for the sheriffs results in their investigators having greater resources than typically available to DCF investigators. Due to their law enforcement affiliation, child abuse investigators working for sheriffs also generally have greater access to training and specialists, as well as enhanced cooperation and community respect not always afforded to DCF investigators.¹¹ The additional resources available to sheriffs' offices enhanced their investigators' ability to perform job duties and the offices ability to attract and retain experienced investigators. Sheriffs:

- Have slightly lower overall investigator caseloads;
- Tend to have more investigative aides and support staff positions;
- Provide vehicles for investigators;
- Provide investigator uniforms;
- Provide additional equipment to investigators;
- Provide supplies for children awaiting placement, including diapers, formula, food, and clothes;
- Have well-equipped visitation rooms with furniture, rugs, toys, television, games,

⁹ *Id.*

¹⁰ Data provided by Senate Appropriations professional staff.

¹¹ The Florida Legislature, Office of Program Policy Analysis and Government Accountability, Research Memorandum, *Sheriff's Offices Have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF*, February 26, 2010.

- kitchens, and bathrooms to provide children with a comfortable and safe environment after removal, further enabling investigators to perform their job more easily;
- Provide investigators with office space either in the sheriff's office or collocated with or near community-based care lead agencies, which facilitates communication between supervisors and investigators and enhances accountability; and
- Often provide higher salaries for investigators, which enhances morale and also contributes to lower turnover. In addition to higher salaries, sheriffs' child protective investigators are normally awarded merit and cost-of-living raises.¹²

Child protective investigation units administered by sheriffs' offices also have advantages that are not entirely due to their higher state funding. Because sheriff's offices are law enforcement agencies, they can provide protective investigators with access to training and resource specialists, and a higher degree of cooperation with local law enforcement agencies and the community.¹³

However, the higher funding and other advantages enjoyed by the sheriff's offices does not appear to result in better outcomes.¹⁴ The table below shows the difference in performance between the department and the sheriffs' offices on the measure of non-recurrence of maltreatment within six months of case closure. The federal Administration for Children and Families non-recurrence standard is 94.6%.¹⁵

County Sheriff	Non-Recurrence of Maltreatment Within Six Months of Case Closure							
	August 2015	September 2015	October 2015	November 2015	December 2015	January 2016	February 2016	March 2016
Broward	94.96	93.90	95.15	93.58	93.59	93.08	94.39	91.07
Hillsborough	95.88	97.03	95.32	97.13	95.77	92.11	95.81	97.01
Manatee	95.45	93.75	96.23	96.88	96.40	91.80	93.26	91.60
Pasco	97.06	94.62	96.09	96.40	98.41	90.83	97.70	97.22
Pinellas	92.21	91.38	94.39	92.89	93.00	95.00	93.98	90.77
Seminole	93.78	89.13	93.26	91.43	92.90	93.37	91.85	93.72
Sheriff Average	94.89	93.30	95.07	94.71	95.01	92.82	94.50	93.56
Department Average	95.01	96.20	94.89	95.24	95.93	94.75	94.31	96.11

¹² *Id.*

¹³ *Id.*

¹⁴ The Florida Legislature, Office of Program Policy Analysis and Government Accountability, Research Memorandum, *Sheriffs' Offices and DCF Perform Similarly in Conducting Child Protective Investigations*, May 28, 2010.

¹⁵ The Department of Children and Families, Florida Sheriffs Performing Child Protective Investigations, Annual Program Performance Evaluation Report, Fiscal Year 2015-2015, available at: <http://centerforchildwelfare.fmhi.usf.edu/kb/LegislativeMandatedRpts/AnnualSheriffPerfRptFY15-16.pdf>. (last visited March 17, 2017).

Cost

The following table provides a 4-year funding history that includes total funding amounts and cost per investigation for each of the six counties where the sheriff provides child protective investigations and the department.¹⁶

County Sheriff	FY 2013-14		FY 2014-15		FY 2015-16		FY 2016-17
	Funding	Cost Per Investigation	Funding	Cost Per Investigation	Funding	Cost Per Investigation	Funding
Broward	\$14,565,620	\$1,078	\$15,054,474	\$1,053	\$15,054,474	\$1,130	\$15,454,474
Hillsborough	\$12,254,683	\$1,062	\$13,430,952	\$1,149	\$13,430,952	\$1,127	\$13,830,952
Manatee	\$3,760,532	\$912	\$4,719,787	\$1,155	\$4,719,787	\$1,107	\$4,719,787
Pasco	\$5,591,619	\$1,093	\$6,241,374	\$1,186	\$6,241,374	\$1,143	\$6,641,374
Pinellas	\$10,240,024	\$1,093	\$11,828,667	\$1,267	\$11,828,667	\$1,300	\$11,828,667
Seminole	\$3,563,114	\$889	\$4,537,154	\$1,144	\$4,537,154	\$1,130	\$4,537,154
All Sheriffs	\$49,975,592		\$55,812,408		\$55,812,408		\$57,012,408
Department	\$111,777,077	\$821	\$133,870,553	\$971	\$138,028,685	\$967	\$137,961,963

III. Effect of Proposed Changes:

Section 1 amends s. 39.6035, F.S., relating to sheriffs of certain counties to provide child protective investigative services, to authorize the Walton County Sheriff to assume responsibility for the investigations beginning with the 2017-2018 fiscal year.

Section 2 provides and effective date of upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ Data provided by Senate Appropriations professional staff.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department has projected the cost of funding the child protection investigative functions in Walton County for FY 2016-17 to total \$890,459.¹⁷ There will likely be additional costs due to the transition.

VI. Technical Deficiencies:

New language in lines 18-21 is unnecessary. Current law authorizes the department to enter into grant agreements with the sheriff of any county to perform child protective investigations.¹⁸ Hillsborough County and Seminole County perform child protective investigations without being named in the statute.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.3065 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 21, 2017:

The committee substitute;

- Removes the provision requiring funding for child protective investigations go directly to the Walton County Sheriff's Office instead of through the department.

B. Amendments:

None.

¹⁷ The Governor's Recommended Budget for FY 2017-2018 recommends \$819,778 in funding for the Walton County Sheriff's Office to perform child protective investigations. It is unclear whether this amount includes any start-up funding that may be needed.

¹⁸ Section 39.3065(3)(a), F.S.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



644966

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Gainer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 81.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 7 - 19

and insert:

specified fiscal year;

By Senator Gainer

2-01084-17

20171092__

A bill to be entitled

An act relating to sheriffs providing child protective investigative services; amending s. 39.3065, F.S.; requiring the Walton County Sheriff to have the responsibility to provide all child protective investigations in Walton County beginning with a specified fiscal year; authorizing the Department of Children and Families to enter into a performance agreement with the Walton County Sheriff to perform child protective investigations in Walton County; requiring the state to disburse funds for providing child protective investigations in Walton County directly to the Walton County Sheriff; prohibiting such funds from being required to go through the Department of Children and Families; requiring the Walton County Sheriff to establish specific accounts to track child protective investigation budgets and expenditures in compliance with certain standards; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 39.3065, Florida Statutes, is amended to read:

39.3065 Sheriffs of certain counties to provide child protective investigative services; procedures; funding.—

(3)(a) Beginning in fiscal year 1999-2000, the sheriffs of Pasco County, Manatee County, Broward County, and Pinellas

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-01084-17

20171092__

County have the responsibility to provide all child protective investigations in their respective counties. Beginning with the 2017-2018 fiscal year, the Walton County Sheriff has the responsibility to provide all child protective investigations in Walton County. Beginning in fiscal year 2000-2001, the Department of Children and Families is authorized to enter into grant agreements with sheriffs of other counties to perform child protective investigations in their respective counties. Beginning with the 2017-2018 fiscal year, the Department of Children and Families is authorized to enter into a performance agreement with the Walton County Sheriff to perform child protective investigations in Walton County.

(b) The sheriffs shall operate, at a minimum, in accordance with the performance standards and outcome measures established by the Legislature for protective investigations conducted by the Department of Children and Families. Each individual who provides these services must complete, at a minimum, the training provided to and required of protective investigators employed by the Department of Children and Families.

(c) Funds for providing child protective investigations must be identified in the annual appropriation made to the Department of Children and Families, which shall award grants for the full amount identified to the respective sheriffs' offices. Notwithstanding the provisions of ss. 216.181(16)(b) and 216.351, the Department of Children and Families may advance payments to the sheriffs for child protective investigations. Funds for the child protective investigations may not be integrated into the sheriffs' regular budgets. Budgetary data and other data relating to the performance of child protective

Page 2 of 3

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2-01084-17

20171092__

investigations must be maintained separately from all other records of the sheriffs' offices and reported to the Department of Children and Families as specified in the grant agreement.

(d) Notwithstanding paragraph (c), the state shall disburse funds for providing child protective investigations in Walton County directly to the Walton County Sheriff, and not through the Department of Children and Families. The Walton County Sheriff shall establish specific accounts to track child protective investigation budgets and expenditures in compliance with the standards contained in this section.

(e) Program performance evaluation shall be based on criteria mutually agreed upon by the respective sheriffs and the Department of Children and Families. The program performance evaluation shall be conducted by a team of peer reviewers from the respective sheriffs' offices that perform child protective investigations and representatives from the department. The Department of Children and Families shall submit an annual report regarding quality performance, outcome-measure attainment, and cost efficiency to the President of the Senate, the Speaker of the House of Representatives, and to the Governor no later than January 31 of each year the sheriffs are receiving general appropriations or direct funding to provide child protective investigations.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-17

Meeting Date

SB 1092

Bill Number (if applicable)

Topic Child Protective Investigations

Name Sheriff Michael Adkinson

Job Title Sheriff of Walton County

Address 752 Tripb G Rd

Street

Defuniak Springs FL

City

State

Zip

Phone 850-892 8111

Email SheriffAdkinson@WaltonCounty.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1092
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
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RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1094

INTRODUCER: Senator Gainer

SUBJECT: Forensic Hospital Diversion Pilot Program

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.			JU	
3.			AP	

I. Summary:

SB 1094 authorizes the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in Okaloosa County in conjunction with the First Judicial Circuit in Okaloosa County. The purpose of the program is to provide competency-restoration and community-reintegration services in either a locked residential treatment facility when appropriate or a community-based facility based on consideration of public safety, the needs of the individual, and available resources.¹

The bill has an effective date and will have a fiscal impact on the state courts and the Department of Children and Families.

II. Present Situation:

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.²

In 2016, the Legislature created the Forensic Hospital Diversion Pilot Program to serve offenders who have mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities.³

The Department of Children and Families (DCF) was authorized to implement a Forensic Hospital Diversion Pilot Program in Duval County, in conjunction with the Fourth Judicial Circuit in Duval County; in Broward County, in conjunction with the Seventeenth Judicial

¹ Section 916.185(3), F.S.

² Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-18, The Forensic Mental Health System* (September 2011).

³ Section 916.185(1), F.S.

Circuit in Broward County; and in Miami-Dade County, in conjunction with the Eleventh Judicial Circuit in Miami-Dade County.⁴ Participation in the pilot program is limited to offenders who:

- Are 18 years of age or older.
- Are charged with a felony of the second degree or a felony of the third degree.
- Do not have a significant history of violent criminal offenses.
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity.
- Meet public safety and treatment criteria established by the department for placement in a community setting.
- Otherwise would be admitted to a state mental health treatment facility.⁵

III. Effect of Proposed Changes:

Section 1 amends s. 916.185, F.S., to authorize DCF to implement a Forensic Hospital Diversion Pilot Program, modeled after the Miami-Dade Forensic Alternative Center and taking into account local needs and resources, in Okaloosa County, in conjunction with the First Judicial Circuit in Okaloosa County, Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Costs savings may be realized by implementation of the forensic hospital diversion pilot project. The program may keep individuals in the program whose competency has been

⁴ Section 916.185(3)(a), F.S.

⁵ Section 916.185(4), F.S.

restored rather than in jail while awaiting trial. This may shorten the process, as defendants are less likely to decompensate, or lose competency again from the stress and the less-than-optimal treatment provided in a jail setting. Competency is restored more quickly through the program, which requires 103 days on average than at state facilities, which requires 146 days on average.

Typically, there is a cost associated with the implementation of a forensic hospital diversion pilot project. The department has not provided an analysis of the estimated cost of the implementation of a pilot program in Okaloosa County. However, in 2015 when the Legislature authorized the department to implement four pilot programs the department estimated the implementation cost of each pilot project to be \$1,596,000.⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 916.185, Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶ 2015 Agency Legislative Bill Analysis, Department of Children and Families, dated March 30, 2015, and on file with the Senate Committee on Children, Families and Elder Affairs.

By Senator Gainer

2-01341-17

20171094__

A bill to be entitled

An act relating to the Forensic Hospital Diversion Pilot Program; amending s. 916.185, F.S.; authorizing the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in Okaloosa County in conjunction with the First Judicial Circuit in Okaloosa County; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 916.185, Florida Statutes, is amended to read:

916.185 Forensic Hospital Diversion Pilot Program.—

(3) CREATION.—There is authorized a Forensic Hospital Diversion Pilot Program to provide competency-restoration and community-reintegration services in either a locked residential treatment facility when appropriate or a community-based facility based on considerations of public safety, the needs of the individual, and available resources.

(a) The department may implement a Forensic Hospital Diversion Pilot Program modeled after the Miami-Dade Forensic Alternative Center, taking into account local needs and resources in Okaloosa County, in conjunction with the First Judicial Circuit in Okaloosa County; in Duval County, in conjunction with the Fourth Judicial Circuit in Duval County; in Broward County, in conjunction with the Seventeenth Judicial Circuit in Broward County; and in Miami-Dade County, in conjunction with the Eleventh Judicial Circuit in Miami-Dade County.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-01341-17

20171094__

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.21.17
Meeting Date

1094
Bill Number (if applicable)

Topic Forensic Hospital Diversion
Name Sarah Busk

Amendment Barcode (if applicable)

Job Title _____

Address 204 S Monroe St
Street
TLH FL 32301
City State Zip

Phone 850.222.8400

Email sjbcardenas@parthas.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Okaloosa County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

3.21.17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1094

Bill Number (if applicable)

Topic Forensic Hospital Diversion

Amendment Barcode (if applicable)

Name Stefan Vaughn

Job Title Chief Corrections Officer

Address 1200 E James Lee Blvd

Phone 850.689.5763

Street

Cressview

City

FL

State

32539

Zip

Email Svaughn@co.okaloosa.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Okaloosa County Department of Corrections

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 Mar 17

Meeting Date

1094

Bill Number (if applicable)

Topic Forensic Hospital Diversion Pilot Prog.

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Street

Phone 850.510.9922

Tall
City

FL
State

32301
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1094
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/ SB 1392

INTRODUCER: Children, Families, and Elder Affairs and Senator Latvala

SUBJECT: Temporary Assistance for Needy Families (TANF) Applicant Drug Screening

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1392 amends s. 414.0652, F.S., to require the Department of Children and Families (DCF) to drug test applicants for Temporary Assistance for Needy Families (TANF) who have been convicted of committing or attempting to commit certain drug-related felonies within the last 10 years and who the department has reasonable suspicion is engaging in the illegal use of a controlled substance.

The bill also removes the requirement that the criteria for testing include any parent or caretaker included in the cash assistance group, that in two-parent families both parents must comply with the drug-testing and any teen parent not required to live with a parent, legal guardian or other caretaker relative must be drug-tested.

This bill has an effective date of July 1, 2017, and a fiscal impact.

II. Present Situation:

Temporary Assistance for Needy Families (TANF)

Under the federal welfare reform legislation of 1996, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance program. The law ended federal entitlement to assistance and instead

created TANF as a block grant that provides states, territories, and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in 2006 by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

Florida's Temporary Cash Assistance Program

The Temporary Cash Assistance (TCA) Program provides cash assistance to families with children under the age of 18 or under age 19¹ if full time secondary school students, that meet the technical, income, and asset requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes. In November 2016, 12,517 adults and 65,855 children received TCA²

Florida law specifies two categories of families who are eligible for TCA: those families that are work-eligible and may receive TCA for the full-family, and those families that are eligible to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements to receive TCA for the parent(s) and child(ren). Additionally, there are two types of child-only TCA:

- Where the child has not been adjudicated dependent, but is living with a relative,³ or still resides with his or her custodial parent, but that parent is not eligible to receive TCA;⁴ and
- The Relative Caregiver Program, where the child has been adjudicated dependent and has been placed with relatives by the court. These relatives are eligible for a payment that is higher than the typical child-only TCA.

The majority of cash assistance benefits are provided to child-only cases, through the Relative Caregiver Program or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work requirements. In November 2016, 35,350 of the 47,204 families received TCA were child-only cases.⁵ In November 2016, there were 11,854 families receiving TCA through full-family cases containing an adult, 520 of which were two-parent families; these are the families who are subject to work requirements.⁶

Various state agencies and entities work together through a series of contracts or memorandums of understanding to administer the TCA program.

- The Department of Children and Families (DCF) is the recipient of the federal TANF block grant. DCF monitors eligibility and disperses benefits.

¹ Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.

² Department of Children and Families, Monthly Flash Report Caseload Data: November 2016, <http://www.dcf.state.fl.us/ess/reports/docs/flash2005.xls> (last visited January 30, 2017).

³ Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.

⁴ Child-only families also include situations where a parent is received federal Supplemental Security Income (SSI) payments, situations where the parent is not a U.S. citizen and is ineligible to receive TCA due to his or her immigration status, and situations where the parent has been sanctioned for noncompliance with work requirements.

⁵ *Supra*, note 2.

⁶ *Id.*

- CareerSource Florida, Inc., is the state's workforce policy and investment board. CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.
- The Department of Economic Opportunity (DEO) implements the policy created by CareerSource Florida.⁷ DEO submits financial and performance reports ensuring compliance with federal and state measures and provides training and technical assistance to Regional Workforce Boards.
- Regional Workforce Boards (RWBs) provide a coordinated and comprehensive delivery of local workforce services. The RWBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas, and contracting with one-stop career centers. The contracts with the RWBs are performance- and incentive-based.

Eligibility Determination

An applicant must meet all eligibility requirements to receive TCA benefits. The initial application for TANF is processed by DCF. DCF determines an applicant's eligibility. Additionally, to be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption.⁸ If no exemptions from work requirements apply, DCF refers the application to DEO.⁹ Upon referral, the participant must complete an in-take application and undergo assessment by RWB staff. Once the assessment is complete, the staff member and participant create the Individual Responsibility Plan (IRP). DCF does not disperse any benefits to the participant until DEO or the RWB confirms that the participant has registered and attended orientation.

Work Requirement

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities¹⁰ for the maximum number of hours allowable under federal law.¹¹ The number of required work or activities hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount.

Protective Payee

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate TCA.¹² In the event TCA is terminated for the noncompliance adult, but not the children, DCF establishes a protective payee that will receive the funds on behalf of any children in the home who are under the age of 16.¹³ The protective payee shall be designated by DCF and must agree in writing to use the assistance in the best interest of the child or children. Protective payees may include:

⁷ Section 445.007(13), F.S.

⁸ Section 414.105, F.S.

⁹ This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system the information may be accessed by any of the RWBs or One-Stop Career Centers.

¹⁰ 45 C.F.R. Section 261.30

¹¹ Section 445.024, F.S.

¹² Section 414.065, F.S.

¹³ *Id.*

- A relative or other individual who is interested in or concerned with the welfare of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee.¹⁴

Drug Testing

Section 414.0652, F.S. requires DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits; however, this law was declared unconstitutional and is currently not being implemented.¹⁵

Section 414.0652, F.S., applied to all individuals included within the cash assistance group covered by the TANF application, with the exception of children under the age of 18. It disqualified an individual from receiving TANF benefits for one year if that person tested positive for controlled substances.¹⁶ If a parent tested positive, DCF could appoint a protective payee who would receive funds on behalf of the child, or the parent could designate an immediate family member, or an individual approved by DCF, to receive TANF benefits on behalf of the child.¹⁷

The initial disqualification of one year could be reduced to six months upon proof of completion of a substance abuse treatment program.¹⁸ A subsequent positive test disqualified the individual from receiving TANF benefits for three years from the date of the positive test.¹⁹

The tested individuals were responsible for the cost of the drug test; however, applicants whose tests were negative for drugs were reimbursed by DCF in the form of an increase in the TANF benefit to the applicant for the cost of the drug screen.²⁰

Drug Testing of TANF Recipients

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive.²¹

Drug Testing TANF Recipients in Other States

Several states require drug testing or screening for TANF applicants or recipients. Some laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder, and other laws require a specific screening process. For example:

¹⁴ *Id.*

¹⁵ *Lebron v. Wilkins*, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013).

¹⁶ Section 414.0652(1)(b), F.S.

¹⁷ Section 414.0652(2)-(3), F.S.

¹⁸ Section 414.0652(2)(j), F.S.

¹⁹ Section 414.0652(2)(h), F.S.

²⁰ Section 414.0652(1), (2)(a), F.S.

²¹ Pub. L. 104-193, s. 902; 21 U.S.C. 862(b).

Alabama requires its Department of Human Resources to administer a drug screening program for any adult applying for TCA who is otherwise eligible, upon reasonable suspicion that the adult uses or is under the influence of a drug.²² Reasonable suspicion exists if an applicant has a conviction for the use or distribution of a drug within five years prior to the date of the application for TCA or tested positive without a valid prescription as a result of the required drug screening.²³ Maine permits its Department of Health and Human Services to administer a drug test to a TANF recipient who, at the time of application, has been convicted of a drug-related felony within the last 20 years.²⁴

Mississippi and Utah require all applicants for TANF to complete a written questionnaire to determine the likelihood of a substance abuse problem.²⁵ If the results indicate a likelihood the person has a substance abuse problem, the applicant must submit to a drug test.²⁶ The Oklahoma Department of Human Services screens all TANF applicants to determine if they are engaged in the illegal use of a controlled substance using a Substance Abuse Subtle Screening Inventory (SASSI) or other similar screening methods.²⁷

From 2012 to 2014, Tennessee phased in suspicion-based drug testing for TANF applicants.²⁸ Tennessee's Department of Human Services was directed to develop appropriate screening techniques and processes that would establish reasonable cause that an applicant for TANF is using a drug and was also directed to identify and select a screening tool such as SASSI or another similar technique to be employed for this program.²⁹

Additionally, Missouri and North Carolina also drug tests all applicants and recipients of TANF for whom they have reasonable cause to believe based on an initial screening that they are engaged in illegal use.³⁰ Neither state specifies the type of screening which may give rise to a reasonable suspicion in statute.

Constitutional Challenge to s. 414.0652, F.S.: Lebron v. Wilkens

In 2011, the Florida Legislature passed HB 353,³¹ which created s. 414.0652, F.S., requiring DCF to drug test each individual for temporary cash assistance as a condition of eligibility for those benefits.

Under s. 414.0652, F.S., all individuals included within the cash assistance group covered by the TANF application were required to submit to testing with the exception of children under the age of 18. The bill required all parents to be tested including minor parents who are not required to live with a parent, legal guardian, or other adult caretaker. It also disqualifies individuals from

²² Ala. Code Section 38-1-7(b).

²³ *Id.*

²⁴ Me. Rev. Stat. tit. 22, Section 3726

²⁵ Miss. Code. Ann Section 43-17-6; Utah Code Ann. Section 35A-3-304.5

²⁶ *Id.*

²⁷ 56 Okl. St. Section 230.52.

²⁸ Tenn. Code Ann. Section 71-3-1202.

²⁹ *Id.*

³⁰ Mo. Ann. Stat. Section 208.027; N.C. Gen. Stat. Ann. Section 108A-29.1.

³¹ Ch. 81-2011, Laws of Florida

receiving TANF benefits if they tested positive for controlled substances. The initial disqualification is for one year from the date of the positive test; however, upon showing proof of completing a substance abuse treatment program, the individual may exercise a one-time option to reapply for TANF benefits within six months from the date of the positive test. Upon a subsequent positive test, the individual is disqualified from receiving TANF benefits for three years from the date of that positive test.

Section 414.0652, F.S., was challenged in a class action lawsuit by TANF recipients and was declared unconstitutional by the United State District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh District.

The Middle District Court, on December 31, 2013, issued summary judgment for the plaintiff on the grounds that the state had failed to establish a special need to drug test all TANF applicants. The Court declared the statute facially unconstitutional and permanently prohibited the State from reinstating and enforcing the law.³² The Middle District was highly critical of any suspicionless drug test. The legal question before the Middle District was whether s. 414.0652, F.S., which required all applicants for TANF benefits to submit to suspicionless drug testing, was unconstitutional under the Fourth and Fourteenth Amendments.³³ A drug test is a search under the Fourth Amendment, as applicable to the states through the Fourteenth Amendment.³⁴ The Fourth and Fourteenth Amendments do not prohibit all searches; only unreasonable searches; for a search to be reasonable, it ordinarily must be based on individualized suspicion of wrongdoing.³⁵ Because there was no suspicion of wrongdoing as the basis for the search, the state was required to prove that there was a substantial special need to drug test all TANF recipients.³⁶ The state argued that the following interests qualify as special needs sufficiently substantial to permit an exception to the Fourth Amendment in this case:

- Ensuring TANF participants' job readiness;
- Ensuring the TANF program meets its child-welfare and family-stability goals; and
- Ensuring that public funds are used for their intended purposes and not to undermine public health.³⁷

The Middle District found these goals and objectives laudable, but “insufficient to place the entire Florida TANF population into that ‘closely guarded category’ of citizens for whom the Supreme Court has sanctioned suspicionless, mandatory drug testing.”³⁸ Additionally, the Middle District found that the state had not shown that suspicionless and warrantless drug testing was necessary to address alleged concerns.³⁹ On December 3, 2014, the U.S. Eleventh Circuit Court of Appeals affirmed the ruling of the Middle District, and held that the state did not “meet its burden of establishing a substantial special need to drug test all TANF applicants without suspicion” and violated the Fourth Amendment for its unreasonable search of applicants without

³² *Lebron v. Wilkins*, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013)

³³ *Id.* at 1287.

³⁴ *Id.* at 1288.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1291.

³⁸ *Id.*

³⁹ *Id.*

evidence of “a more prevalent, unique, or different drug problem among TANF applicants than in the general population.”⁴⁰

III. Effect of Proposed Changes:

Section 1 amends 2. 414.0652, F.S., requiring DCF to administer a drug test at the time a person applies for TANF who:

- Has a previous conviction of committing or attempting to commit a drug-related felony listed in chapter 893, within the last 10 years; and
- DCF has reasonable suspicion to believe the person is engaging in the illegal use of a controlled substance.

The following are not included in the drug-testing requirement:

- Any parent or caretaker relative who is included in the cash assistance group, including individuals who may be exempt from work activity requirements due to the age of the youngest child or may be exempt from the work activity requirements.
- Both parents, if they are in two-parent families.
- Any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative.

Additionally, an individual with a positive drug-test and denied TANF benefits is allowed to reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401, F.S. and is licensed by DCF.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. Under s. 414.0652, F.S. as currently written, Florida’s suspicionless TANF drug testing was determined facially

⁴⁰ *Lebron v. Sec’y of the Fla. DCF*, 772 F. 3d 1352, 1355 (11th Cir. 2014)

unconstitutional. Other states have successfully implemented “suspicion based” TANF drug testing programs, which would base drug testing on a previous conviction for a drug-related felony or a reasonable suspicion that an applicant or recipient has a substance abuse problem.

The bill does not address whether current recipients of TANF funds would be subject to the criminal history checks to determine if they should be drug tested. If they are not subject to the criminal history check and, if appropriate, the drug testing requirements, the statute could be open to challenge on the grounds it is treating similarly situated individuals differently.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

TCA applicants will pay for the initial drug test. This is estimated to cost between \$28.50 and \$40.00. As TCA is a program for individuals with very low incomes, this could present a financial hardship for some applicants.

C. Government Sector Impact:

DCF will be responsible for reimbursing individuals who test negative for controlled substances for the cost of the drug test. Based on drug testing costs in 2011, DCF estimates a potential cost for a bundled rate between \$28.50 and \$40 per person. Additionally, DCF estimates a conservative minimum of 408 new applicants per month would be tested at \$40 per drug test for a monthly cost of \$16,320. This would translate into an annual cost of $\$16,320 \times 12 = \$195,840$ annually. The department based this assumption that all applicants would test negative and the department would be required to reimburse all individuals. These costs would be decreased based on the number of individuals who tested positive.⁴¹

The bill is not clear how DCF will know the criminal history of the applicant nor is it clear whether the criminal history shall be a state or national history check. If DCF must run a criminal history check through the Florida Department of Law Enforcement, additional costs will be incurred. Currently, DCF averages 26,213 TANF applications per month which includes an adult household member. The fee for DCF to obtain a record for criminal history information for each applicant is \$24.00. The annual cost for obtaining these records would be \$7,549,344. In s. 943.0542, F.S., DCF’s vendors pay \$8.00 per name submitted for a state criminal history check. The Legislature could authorize a fee

⁴¹ Department of Children and Families, Agency Analysis of SB 1392 dated March 2, 2017 (on filed with the Senate Committee on Children, Families and Elder Affairs).

of \$8.00 for the screening of TANF applications. It is necessary to determine how often applicants would be re-screened and the cost of re-screening will be a factor.

Additionally, although DCF did not include additional resources in its legislative analysis, it is anticipated that additional staff and upgrades of its current computer system would be necessary.

In its analysis dated March 17, 2017, the Florida Department of Law Enforcement (FDLE) stated that no additional programming will be required under this proposed legislation. However, FDLE noted that this bill combined with other background screening bills will add to the workload of its Biometric ID System.

VI. Technical Deficiencies:

It is unclear if a statewide or national criminal history check is needed if testing is required. DCF does not control currently collected information on the number of individuals with prior non-trafficking felony drug convictions. In order to implement this policy, DCF would need additional legislative authority to access criminal justice information and criminal justice information systems as defined in s. 943.045, F.S., to include screening for past drug infractions.⁴²

After it is established whether a statewide or national criminal history check is necessary, it would be necessary to determine how often applicants are re-screened.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 414.0652 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 21, 2017:

- Amends s. 414.0652, F.S., to require DCF to a drug test of each individual applying for TANF funds who has been convicted of committing or attempting to commit certain drug-related felonies within the last 10 years; and who the

⁴² *Id.*

department has reasonable suspicion to believe the person is engaging in the illegal use of a controlled substance.

- Removes the drug-testing requirement for the following:
 - Any parent or caretaker relative who is included in the cash assistance group, including any individual who may be exempt from work activity requirements due to the age of the youngest child.
 - Both parents if included in a two-parent family.
 - Any teen parent not required to live with a parent, legal guardian, or other caretaker relative

Individuals who have a positive drug test are allowed to reapply for TANF benefits after 6 months if they can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements in s. 397.401, F.S. and is licensed by DCF.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (1) and (2) of section 414.0652,
Florida Statutes, are amended to read:

414.0652 Drug screening for applicants for Temporary
Assistance for Needy Families.—

(1) (a) The department shall require a drug test consistent
with s. 112.0455 to screen each individual who applies for



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Temporary Assistance for Needy Families (TANF) who:

1. Has been convicted of committing or attempting to commit a drug-related felony under chapter 893 within the last 10 years; and

2. The department has a reasonable suspicion is engaging in the illegal use of a controlled substance.

(b) The cost of drug testing is the responsibility of the individual tested.

~~(a) An individual subject to the requirements of this section includes any parent or caretaker relative who is included in the cash assistance group, including an individual who may be exempt from work activity requirements due to the age of the youngest child or who may be exempt from work activity requirements under s. 414.065(4).~~

(c) ~~(b)~~ An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (2) (h) ~~(2) (j)~~.

(2) The department shall:

(a) Provide notice of drug testing to each individual at the time of application. The notice must advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. If the individual tests negative for controlled substances, the department shall increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. The individual shall be advised that the required drug testing may be avoided if the individual does not



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40 apply for TANF benefits. Dependent children under the age of 18
41 are exempt from the drug-testing requirement.

42 ~~(b) Require that for two-parent families, both parents must~~
43 ~~comply with the drug-testing requirement.~~

44 ~~(c) Require that any teen parent who is not required to~~
45 ~~live with a parent, legal guardian, or other adult caretaker~~
46 ~~relative in accordance with s. 414.095(14)(c) must comply with~~
47 ~~the drug-testing requirement.~~

48 (b) ~~(d)~~ Advise each individual to be tested, before the test
49 is conducted, that he or she may, but is not required to, advise
50 the agent administering the test of any prescription or over-
51 the-counter medication he or she is taking.

52 (c) ~~(e)~~ Require each individual to be tested to sign a
53 written acknowledgment that he or she has received and
54 understood the notice and advice provided under paragraphs (a)
55 and (b) ~~(d)~~.

56 (d) ~~(f)~~ Assure each individual being tested a reasonable
57 degree of dignity while producing and submitting a sample for
58 drug testing, consistent with the state's need to ensure the
59 reliability of the sample.

60 (e) ~~(g)~~ Specify circumstances under which an individual who
61 fails a drug test has the right to take one or more additional
62 tests.

63 (f) ~~(h)~~ Inform an individual who tests positive for a
64 controlled substance and is deemed ineligible for TANF benefits
65 that the individual may reapply for those benefits 1 year after
66 the date of the positive drug test unless the individual meets
67 the requirements of paragraph (h) ~~(j)~~. If the individual tests
68 positive again, he or she is ineligible to receive TANF benefits



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for 3 years after the date of the second positive drug test unless the individual meets the requirements of paragraph (h) ~~(j)~~.

(g) ~~(i)~~ Provide any individual who tests positive with a list of licensed substance abuse treatment providers available in the area in which he or she resides that meet the requirements of s. 397.401 and are licensed by the department. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(h) ~~(j)~~ Allow an individual who tests positive under this section and is denied TANF benefits as a result to ~~may~~ reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department. An individual who has met the requirements of this paragraph and reapplies for TANF benefits must also pass an initial drug test and meet the requirements of subsection (1). Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (1). The cost of any drug testing and substance abuse treatment provided under this section shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (1) may reapply for benefits under this paragraph only once.

Section 2. This act shall take effect July 1, 2017.

===== T I T L E A M E N D M E N T =====



473858

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to drug screening for Temporary
Assistance for Needy Families applicants amending s.
414.0652, F.S.; requiring the Department of Children
and Families to perform a drug test on an applicant
for TANF benefits with a prior drug-related felony
conviction and who the department reasonably suspects
is engaging in the illegal use of a controlled
substance; deleting a provision stating which
individuals are subject to specified requirements;
deleting department duties to require specified
individuals to comply with the drug-testing
requirements; providing an effective date.

By Senator Latvala

16-00944-17

20171392__

A bill to be entitled

An act relating to Temporary Assistance for Needy Families (TANF) applicant drug screening; creating s. 414.0653, F.S.; requiring the Department of Children and Families to perform a drug test on an applicant for TANF benefits with a prior felony conviction or history of arrests for a drug-related offenses; specifying that the cost of drug testing is the responsibility of the individual tested; requiring the department to provide notice of the drug-screening policy; requiring the department to increase the amount of the initial TANF benefit under certain circumstances; providing procedures for testing and retesting; requiring the department to provide information concerning local substance abuse treatment programs to certain individuals; providing conditions for an individual to reapply for TANF benefits; specifying that a child remains eligible for benefits if a parent fails a drug test; providing conditions for designating another protective payee; providing rulemaking authority to the department; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 414.0653, Florida Statutes, is created to read:

414.0653 Drug screening for applicants for Temporary Assistance for Needy Families.—

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

16-00944-17

20171392__

(1) (a) The department shall require a drug test consistent with s. 112.0455, to be administered at the time of application for benefits and every 2 months after that date, to screen each individual who applies for Temporary Assistance for Needy Families (TANF) who:

1. Has a previous conviction of committing or attempting to commit a felony listed in chapter 893, relating to drug abuse prevention and control.

2. Has a documented history of multiple arrests for drug use or possession within the past 10 years.

The cost of drug testing is the responsibility of the individual tested.

(b) An individual who tests positive for controlled substances as a result of a drug test required under this subsection is ineligible to receive TANF benefits for 2 years after the date of the positive drug test unless the individual meets the requirements of paragraph (2) (g).

(2) The department shall:

(a) Provide notice of drug testing required pursuant to subsection (1) to each individual at the time of application. The notice must advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. If the individual tests negative for controlled substances, the department shall increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. The individual shall be advised that the required drug testing may be avoided if the individual does not apply for TANF benefits. Dependent

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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children under the age of 18 are exempt from the drug-testing requirement.

(b) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication the individual is taking.

(c) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (a) and (b).

(d) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample.

(e) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits that the individual may reapply for those benefits 2 years after the date of the positive drug test unless the individual meets the requirements of paragraph (g). If the individual tests positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test unless the individual meets the requirements of paragraph (g).

(f) Provide any individual who tests positive with a list of licensed substance abuse treatment providers available in the area in which he or she resides which meet the requirements of s. 397.401 and are licensed by the department. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(g) An individual who tests positive under this section and

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is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department. An individual who has met the requirements of this paragraph and reapplies for TANF benefits must also pass an initial drug test and meet the requirements of subsection (1). Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (1). The cost of any drug testing and substance abuse treatment provided under this section shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (1) may reapply for benefits under this paragraph only once.

(3) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this section:

(a) The dependent child's eligibility for TANF benefits is not affected.

(b) An appropriate protective payee shall be designated to receive benefits on behalf of the child.

(c) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual, approved by the department, may be designated. The designated individual must also undergo drug testing before being approved to receive benefits on behalf of the child. If the designated individual

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117 tests positive for controlled substances, he or she is
118 ineligible to receive benefits on behalf of the child.

119 (4) The department shall adopt rules to implement this
120 section.

121 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 Mch 17
Meeting Date

1392
Bill Number (if applicable)

Topic TANF Applicant Drug Screening

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Tall FL 32301
City State Zip

Phone 850.510.9922

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1392
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1400

INTRODUCER: Senator Grimsley

SUBJECT: Child Welfare

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Favorable
2.			AHS	
3.			AP	
4.			RC	

I. Summary:

SB 1400 creates a Hormonal Long Acting Reversible Contraception (HLARC) program at the Department of Health (DOH). The bill provides for program components, requires an annual report to the Governor, the President of the Senate and the Speaker of the House of Representatives and specifies what is to be included in the report.

The bill codifies federal requirements in the Child Abuse Prevention and Treatment Act (CAPTA), related to plans of safe care for substance exposed newborns and creates a pilot program for newborns and their caregivers based on the Shared Family Care model.

The bill provides a \$750,000 appropriation to the Department of Health to implement an HLARC program and has an indeterminate fiscal impact on the Department of Children and Families.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Long-acting Reversible Contraception (LARC)

Unintended pregnancies are a difficult public health problem for both clinicians and policy makers. Unintended pregnancies are associated with an increased risk of adverse reproductive outcomes and sociodemographic¹ challenges. While there was almost three decades of minimal

¹ The term "sociodemographic" refers to a group defined by its sociological and demographic characteristics. It looks at the life around individuals and characteristics such as age, gender, sexual orientation, race, religion, income, marital status, birth rate, death rate, average size of family, heritage, education, medical history. Sociodemographic groups are typically used for analyses in the social sciences.

change in the rate of unintended pregnancies in the United States, the rate has decreased in recent years – from 54 unintended pregnancies per 1,000 adolescents and women 15 to 44 years of age in 2008 to 45 cases per 1,000 adolescents and women in 2011. Nonetheless, the most recent data still indicate that 45% of all pregnancies in the United States are unintended.²

Unintended pregnancy in the United States results in 1.2 million abortions per year, has negative effects on women's health and education and the health of newborns, and imposes a considerable personal burden as well as a financial burden on families and society.³ Women with unintended pregnancies, including those resulting in live births, are also at greater risk of death and morbidity, adverse behaviors (e.g. smoking and drinking) and physical violence by their partners. Evidence supports a relationship between unintended pregnancy and insufficient participation in prenatal care, as well as low birthweight. Children born as a result of mistimed or unwanted conceptions may suffer from deficits in developmental skills and be at higher risk for abuse or neglect. In addition, unplanned pregnancies often disrupt parents' life plans, including educational or professional ambitions, limit the resources available for previously born children and compromise the family's current and future financial security.⁴

Long-acting reversible contraceptives (LARC) are methods of birth control that provide effective contraception for an extended period without requiring user action. They include intrauterine devices (IUDs), both hormonal IUDs and nonhormonal copper containing IUDs and subdermal hormonal implants. They are the most effective reversible methods of contraception because they do not depend on patient compliance. So their 'typical use' failure rates, at less than 1% per year.⁵

In addition to being long-lasting, convenient, and well-liked by users, they are very cost effective. Typically, LARC users can save thousands of dollars over a five-year period compared to the use of condoms and birth control pills. Despite their safety and effectiveness LARCs are underutilized: only 15.5% of women worldwide use IUDs, and only 3.4% use subdermal implants. Women considering using LARCs should obtain contraceptive counseling from reproductive health professionals because those who do are more satisfied with them and use them for longer periods of time.⁶

In 2009, LARC methods became first-line options when the American College of Obstetricians and Gynecologists (ACOG) recommended LARC methods for the majority of women. Since then the growing support had been clear and wide-spread. The American Academy of Pediatrics recommends LARC methods for adolescents as “prevention is the cornerstone of pediatric practice.” In 2012, the ACOG revised one their practice guidelines on LARCs. The new

² Curtis, K. and Peipert, J., *Long-Acting Reversible Contraception*, New England Journal of Medicine 2017, 376: 461-468, February 2, 2017.

³ Winner, B., Madden, T., et al, *Effectiveness of Long-Acting Reversible Contraception*, New England Journal of Medicine, 2012; 366:1998-2007 May 24, 2012.

⁴ Blumenthal, P., Voedisch, A., and Gemzell-Danielsson, K., *Strategies to prevent unintended pregnancy: increasing use of long-acting reversible contraception*, Human Reproduction Update (2011) 17 (1): 121-137, July 15, 2010. Published: 15 July 2010

⁵ Curtis, K. and Peipert, J., *Long-Acting Reversible Contraception*, New England Journal of Medicine 2017, 376: 461-468, February 2, 2017.

⁶ Donna Shoupe, *LARC methods: entering a new age of contraception and reproductive health*, Contraception and Reproductive Medicine 2016, 1:4, February 23, 2016, available at:

<https://contraceptionmedicine.biomedcentral.com/articles/10.1186/s40834-016-0011-8>. (last visited March 17, 2017).

guidelines recommended that sexually active adolescents at high risk for unintended pregnancy should be encouraged to consider LARCs. In its Family Planning Handbook for Providers, the World Health Organization (WHO) recommends the implants and IUDs for women with or without children of any age, including adolescents and women over 40.⁷

All County Health Departments in Florida provide LARC methods. The Department of Health Family Planning Program Office requires that each health department have a trained provider for LARC methods. The DOH has used existing financial resources to purchase LARCs. No additional recurring funding has been appropriated for LARC purchase by the Legislature.

Fiscal Year	Total LARC Expenditures by DOH ⁸
2013-14	\$1,874,625
2014-15	\$1,437,282
2015-16	\$3,110,688
2016-17	Approximately \$3,000,000 has been allocated to purchase LARC products

In addition, Florida Medicaid expenditures for LARCs for FY 2015-16 totaled \$11,293,557.

Substance Exposed Newborns

Statewide Task Force on Prescription Drug Abuse and Newborns

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children either through the harm caused by prenatal drug exposure or the harm caused to children of any age by exposure to drug activity in their homes or environment.

The 2012 Florida Legislature created the Statewide Task Force on Prescription Drug Abuse and Newborns⁹ to begin addressing the growing problem of neonatal abstinence syndrome (NAS).¹⁰ The 15-member Task Force was composed of medical professionals, law enforcement, prevention experts and state legislators. The Task Force was charged by the Legislature with examining the scope of NAS in Florida, its long-term effects and the costs associated with caring for drug exposed babies, and which drug prevention and intervention strategies work best with pregnant mothers.

The Task Force adopted eight specific objectives that include:

- Collecting and organizing data concerning the nature and extent of neonatal withdrawal syndrome from prescription drugs in Florida;
- Collecting and organizing data concerning the costs associated with treating expectant mothers and newborns suffering from withdrawal from prescription drugs;

⁷ *Id.*

⁸ Data provided by Senate Appropriations Committee professional staff.

⁹ Chapter 2012-120, Laws of Florida.

¹⁰ NAS is a drug withdrawal syndrome in newborns following birth characterized by such symptoms as increased irritability, hypertonia, tremors, feeding intolerance and respiratory distress.

- Identifying available federal, state, and local programs that provide services to mothers who abuse prescription drugs and newborns with neonatal withdrawal syndrome;
- Evaluating methods to increase public awareness of the dangers associated with prescription drug abuse, particularly to women, expectant mothers, and newborns;
- Examining barriers to reporting neonatal withdrawal syndrome by medical practitioners while balancing a mother's privacy interests;
- Assessing evidence-based methods for caring for a newborn withdrawing from prescription drugs and how nurses can assist the mother in caring for their child;
- Developing a compendium of best practices for treating both prescription drug addicted mothers and infants withdrawing, both prenatal and postnatal; and
- Assessing the current state of substance abuse treatment for expectant mothers and determine what best practices should be used to treat drug addicted mothers.¹¹

According to hospital discharge data provided by the Agency for Health Care Administration (AHCA), the number of babies born in Florida addicted to opiates has been on the rise every year in the past decade from 338 in 2005 up to 2,487 in 2015. Babies born addicted to opioids commonly remain hospitalized for weeks after they are delivered so doctors can gradually wean them off the drugs in their systems, usually by giving them diminishing amounts of morphine, phenobarbital (a relaxant) and other drugs to combat withdrawal symptoms.¹²

A recent state report on NAS noted that hospital charges for such patients average more than \$53,000, a bill commonly sent to taxpayer-supported Medicaid plans. Medicaid typically pays only a fraction of that cost. The average cost, including prenatal and post-delivery care, runs roughly \$9,000. Babies in drug withdrawal stay an average 20 days in the hospital, though some require months in a neonatal intensive care unit to fully recover.¹³

Child Abuse Prevention and Treatment Act (CAPTA)

The Child Abuse Prevention and Treatment Act (CAPTA) requires states to have policies and procedures in place to notify child protective services agencies of substance-exposed newborns and to establish a plan of safe care for newborns identified as being affected by substance abuse or having withdrawal symptoms resulting from prenatal drug exposure.¹⁴

CAPTA was further amended in 2016 by the Comprehensive Addiction and Recovery Act (CARA)¹⁵ to add requirements for states to ensure the safety and well-being of infants following the release from the care of healthcare providers, by:

- Addressing the health and substance use disorder treatment needs of the infant and affected family members or caregivers;

¹¹ Florida Office of the Attorney General, *Statewide Task Force On Prescription Drug Abuse & Newborns Final Report*, February 2013, available at: [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-94LJPF/\\$file/Statewide Task Force on Prescription Drug Abuse and Newborns Final Report.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-94LJPF/$file/Statewide%20Task%20Force%20on%20Prescription%20Drug%20Abuse%20and%20Newborns%20Final%20Report.pdf). (last visited March 19, 2017).

¹² Gluck, F., *Born High: Florida battles rising cases of addicted newborns*, available at: <http://www.news-press.com/story/news/investigations/2016/07/16/born-high-florida-battles-rising-cases-addicted-newborns/87025868/>. (last visited March 19, 2017).

¹³ *Id.*

¹⁴ U.S.C. s.5106a(b), as amended by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

¹⁵ P.L. 114-198.

- Monitoring these plans of safe care to determine whether and how local entities are making referrals and delivering appropriate services to the infant and affected family or caregiver in accordance with state requirements; and
- Developing plans of safe care for infants affected by all substance abuse, not just illegal substance abuse, as was the requirement prior to this change.

Florida law includes exposure to controlled substances or alcohol in the definition of harm:

- Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:
 - A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
 - Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.¹⁶

There is currently no requirement that the parents of substance exposed newborns undergo an assessment or evaluation or complete treatment for substance abuse. The courts presently have the sole discretion to determine whether a parent is required to undergo such treatment.

Shared Family Care

In Shared Family Care (SFC), parent(s) and children are placed together in the home of a family who is trained to mentor and support the parents as they develop the skills and supports necessary to care for their children independently. SFC can also be used to prevent out-of-home placement, to provide a safe environment for the reunification of a family that has been separated, or to help parents consider other permanency options, including relinquishment of parental rights.¹⁷

SFC recognizes that many parents involved in the child welfare system do not intentionally harm their children but lack the skills and/or resources to adequately care for them. SFC addresses this issue by temporarily placing whole families in the homes of community mentors who, along with a team of professionals, help the families to obtain the skills and resources they need to move toward self-sufficiency and adequately care for their children.¹⁸

As an alternative to traditional in-home and out-of-home child welfare services, SFC is based on the following premises:

- Families are more likely to become stable and self-sufficient if their basic needs are met and a mentor helps them to establish a positive network of community resources and support;

¹⁶ Section 39.01(30)(g), F.S. As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

¹⁷ Child Welfare Information Gateway, Shared Family Care, *available at*: <https://www.childwelfare.gov/topics/supporting/support-services/familycare/>. (last visited March 15, 2017).

¹⁸ Price, A. and Wichterman, L., *Shared Family Care: Fostering the Whole Family to Promote Safety and Stability*, Journal of Family Social Work, Vol. 7(2) 2003.

- By nurturing and “reparenting” parents, and modeling and teaching them appropriate parenting and home management skills, SFC helps parents better protect and care for their children and helps families interact in a healthier manner; and
- If SFC is successful at keeping families together and preventing subsequent out-of-home placements, the long-term cost of the program will be less than traditional foster care.¹⁹

III. Effect of proposed Changes:

Section 1 amends s. 30.521, F.S., relating to dependency disposition hearings, to provide that adjudication of a child as dependent based upon evidence of harm as a result of exposing a child to a controlled substance or alcohol demonstrates good cause, and requires the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate in and comply with treatment and services identified as necessary.

Section 2 creates s. 39.6001, F.S., relating to substance exposed newborns, to require the department, in partnership with the Department of Health, the Agency for Health Care Administration, other state agencies and community partners to develop a strategy for providing coordinated services to help ensure the safety and well-being of substance exposed newborns that includes the development and implementation of safe care plans. The department is also required to monitor the plans to ensure that referrals are being made and services are being delivered.

Section 3 amends s. 39.6012, F.S., relating to case plan tasks and services, to provide that adjudication of a child as dependent based upon evidence of harm as a result of exposing a child to a controlled substance or alcohol demonstrates good cause, and requires the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate in and comply with treatment and services identified as necessary.

Section 4 creates s. 381.00515, F.S., relating to hormonal long-acting reversible contraception program, to require the Department of Health to:

- Establish a hormonal long-acting reversible contraception program;
- Contract with eligible family planning and health care providers for statewide implementation. Each contract must include provision of intrauterine devices and implants, training for providers and staff, technical assistance, general support to expand the capacity of family planning clinics, marketing and outreach, and any additional services DOH considers necessary.
- Seek grants from federal agencies and other sources; and
- Submit an annual report to the Governor, the President of the Senate and the Speaker of the House of Representatives, on the effectiveness of the HLARC program. The bill also specifies the information that is to be included in the report.

Section 5 creates s. 409.16741, F.S., relating to substance exposed newborns, to provide legislative findings and intent and require the department to:

¹⁹ *Id.*

- Develop or adopt one or more screening and assessment instruments. Any assessment must include not only the needs of the infant, but also, the behaviors of the mother or father that may indicate a risk of harm to the child;
- Conduct multidisciplinary staffings that include individuals involved in the child's care;
- Assess, with the community-based care lead agencies, local service capacity and design a plan to develop the necessary capacity; and
- Ensure that cases involving substance exposed newborns are assigned to child protective investigators and case managers with specialized training in working with these infants and their families.

Section 6 creates s. 409.16742, F.S., relating to a shared family care residential services program for substance exposed newborns, to provide legislative findings and intent, to require the department to establish a pilot program based on the shared family care model to serve substance exposed newborns and their families in the Fourth Judicial Circuit. The department may contract with either the community-based care lead agency or a private entity with the capacity to provide residential care and required to specify services that should be available for newborns and their families through the pilot program.

Section 7 provides for an appropriation for the 2017-2018 state fiscal year of \$750,000 in recurring funds from the General Revenue Fund to the Department of Health for the purpose of implementing the HLARC program.

Section 8 provides a statement of public necessity.

Section 9 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides a \$750,000 appropriation from the General Revenue Fund to the Department of Health to implement an HLARC program. The fiscal impact on the Department of Children and Families to establish the pilot program for families of substance exposed newborns is unknown and may need an appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 39.521 and 39.6012 of the Florida Statutes.
This bill creates sections 39.6001, 381.00515, 409.16741, and 409.16742 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



278262

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/21/2017	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs
(Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 192 - 193
and insert:
shall contract with eligible family planning and health care
providers to implement the program in small counties as defined
in s. 339.2816(2). A

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



278262

11 Delete lines 26 - 27
12 and insert:
13 program and provide HLARC services in small counties;
14 requiring that such contracts include specified

By Senator Grimsley

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1 A bill to be entitled
 2 An act relating to child welfare; amending s. 39.521,
 3 F.S.; requiring a parent whose actions have caused
 4 harm to a child who is adjudicated to be dependent to
 5 submit to a substance abuse disorder assessment or
 6 evaluation and to participate in and comply with
 7 treatment and services; creating s. 39.6001, F.S.;
 8 requiring the Department of Children and Families, in
 9 partnership with the Department of Health, the Agency
 10 for Health Care Administration, other state agencies,
 11 and community partners, to develop a strategy for
 12 certain coordinated services; providing for creation
 13 of a safe care plan that addresses the health and
 14 substance abuse disorder treatment needs of a newborn
 15 and affected family or caregiver and provides for the
 16 monitoring of services provided; amending s. 39.6012,
 17 F.S.; requiring a parent whose actions have caused
 18 harm to a child adjudicated to be dependent to submit
 19 to a substance abuse disorder assessment or evaluation
 20 and to participate in and comply with treatment and
 21 services; creating s. 381.00515, F.S.; requiring the
 22 Department of Health to establish a hormonal long-
 23 acting reversible contraception (HLARC) program;
 24 requiring the department to contract with family
 25 planning and health care providers to implement the
 26 program and provide HLARC services throughout the
 27 state; requiring that such contracts include specified
 28 provisions; providing for an annual appropriation;
 29 requiring the department to seek grants for additional

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30 funding; requiring the department to submit an annual
 31 report to the Governor and the Legislature by a
 32 specified date; requiring the department to publish
 33 the report on its website; specifying requirements for
 34 the report; creating s. 409.16741, F.S.; providing
 35 legislative findings and intent; requiring the
 36 Department of Children and Families to develop or
 37 adopt one or more initial screening assessment
 38 instruments to identify and determine the needs of,
 39 and plan services for, substance exposed newborns and
 40 their families; requiring the department to conduct
 41 certain staffings relating to services for substance
 42 exposed newborns and their families; specifying that
 43 certain local service capacity be assessed; providing
 44 that child protective investigators receive
 45 specialized training in working with substance exposed
 46 newborns and their families before they accept such
 47 cases; creating s. 409.16742, F.S.; providing
 48 legislative findings and intent; establishing a shared
 49 family care residential services pilot program for
 50 substance exposed newborns; providing an appropriation
 51 subject to certain requirements; providing a statement
 52 of public necessity; providing an effective date.

53
 54 Be It Enacted by the Legislature of the State of Florida:

55
 56 Section 1. Paragraph (b) of subsection (1) of section
 57 39.521, Florida Statutes, is amended to read:
 58 39.521 Disposition hearings; powers of disposition.-

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(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334.

Adjudication of a child as dependent based upon evidence of harm

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as defined in s. 39.01(30)(g) demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate in and comply with treatment and services identified as necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child,

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whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

Section 2. Section 39.6001, Florida Statutes, is created to read:

39.6001 Safe care plans for substance exposed newborns.—The department, in partnership with the Department of Health, the Agency for Health Care Administration, other state agencies, and community partners, shall develop a strategy for coordinated services to ensure the safety and well-being of newborns with prenatal substance exposure by creating, implementing, and monitoring safe care plans. A safe care plan is a written plan for a newborn with prenatal substance abuse exposure following the newborn's release from the care of a health care provider. The plan must address the health and substance abuse disorder treatment needs of the newborn through infancy and the affected family or caregiver. The department shall monitor such plans to ensure appropriate referrals are made and services are delivered to the newborn and the affected family or caregiver.

Section 3. Subsection (1) of section 39.6012, Florida Statutes, is amended to read:

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39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(a) The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.

2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.

3. The date by which the parent must complete each task.

4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.

5. The location of the delivery of the services.

6. The staff of the department or service provider

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accountable for the services or treatment.

7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

(c) If there is evidence of harm as defined in s. 39.01(30)(g), the case plan must require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate in and comply with treatment and services identified as necessary.

Section 4. Section 381.00515, Florida Statutes, is created to read:

381.00515 Hormonal long-acting reversible contraception (HLARC) program.—

(1) The Department of Health shall establish a hormonal long-acting reversible contraception (HLARC) program for the purpose of preventing unwanted pregnancies and improving statewide access to family planning services. The department shall contract with eligible family planning and health care providers to implement the program throughout the state. A contract to provide HLARC services must include all of the following:

(a) Provision of intrauterine devices and implants to participants.

(b) Training for providers and staff regarding the provision of HLARC devices, counseling strategies, and the management of side effects.

(c) Technical assistance regarding such issues as coding, billing, pharmacy rules, and clinic management necessitated by the increased use of HLARC devices.

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(d) General support to expand the capacity of family planning clinics in response to the demand for HLARC program services added.

(e) Marketing and outreach regarding the availability of HLARC services in comparison to other currently available contraceptive services.

(f) Other services the department considers necessary to ensure the health and safety of participants who receive HLARC devices.

(2)(a) The Legislature shall annually appropriate funds from the General Revenue Fund to the department to provide HLARC services.

(b) Funds appropriated pursuant to this subsection may not supplant or reduce any other appropriation of state funds to family planning providers or to the department for family planning services.

(3) The department shall seek grants from federal agencies and other sources to supplement state funds provided for the HLARC program.

(4) By January 1, 2019, and annually thereafter, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the effectiveness of the HLARC program. The department shall publish the report on its website. The report must include, but need not be limited to:

(a) An assessment of the operation of the program, including any progress made in reducing the number of abortions, especially among teenagers.

(b) An assessment of the effectiveness of the program in

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233 increasing the availability of HLARC services.

234 (c) The number and location of family planning providers
235 that participated in the program.

236 (d) The number of clients served by participating family
237 planning providers.

238 (e) The number of times HLARC services were provided by
239 participating family planning providers.

240 (f) The average cost per client served.

241 (g) The demographic characteristics of clients served.

242 (h) The sources and amounts of funding used for the
243 program.

244 (i) A description of federal and other grants the
245 department applied for in order to provide HLARC services,
246 including the outcomes of the grant applications.

247 (j) An analysis of the return on investment for the
248 provision of HLARC services with regard to tax dollars saved on
249 health and social services.

250 (k) A description and analysis of marketing and outreach
251 activities conducted to promote the availability of HLARC
252 services.

253 (l) Recommendations for improving the program.

254 Section 5. Section 409.16741, Florida Statutes, is created
255 to read:

256 409.16741 Substance exposed newborns; legislative findings
257 and intent; screening and assessment; case management;
258 training.-

259 (1) LEGISLATIVE FINDINGS AND INTENT.-

260 (a) The Legislature finds that children, their families,
261 and child welfare agencies have been affected by multiple

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262 substance abuse epidemics over the past several decades, and
263 parental substance abuse is again becoming a growing reason for
264 removing children from their homes and placing them in foster
265 care.

266 (b) The Legislature also finds that infants are the largest
267 age group of children entering foster care and that parental
268 substance abuse disorders are having a major impact not only on
269 increasing child removals, but also on preventing or delaying
270 reunification of families and increasing termination of parental
271 rights.

272 (c) The Legislature further finds that two aspects of
273 parental substance abuse affect the child welfare system:
274 prenatal exposure when it is determined that there are immediate
275 safety factors that necessitate the newborn being placed in
276 protective custody; and postnatal use that affects the ability
277 of the parent to safely care for the child.

278 (d) Therefore, it is the intent of the Legislature that the
279 department will establish and monitor a coordinated approach to
280 working with children and their families affected by substance
281 abuse and dependence.

282 (2) SCREENING AND ASSESSMENT.-The department shall develop
283 or adopt one or more initial screening and assessment
284 instruments to identify, determine the needs of, and plan
285 services for substance exposed newborns and their families. In
286 addition to conditions of the infant, conditions or behaviors of
287 the mother or father which may indicate a risk of harm to the
288 child shall be considered during any assessment.

289 (3) CASE MANAGEMENT.-

290 (a) The department shall conduct regular multidisciplinary

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staffings relating to services provided for substance exposed newborns and their families to ensure that all parties possess relevant information and that services are coordinated across systems identified in this chapter. The department or community-based care lead agency, as appropriate, shall coordinate these staffings and include individuals involved in the child's care.

(b) Each region of the department and each community-based care lead agency shall jointly assess local service capacity to meet the specialized service needs of substance exposed newborns and their families and establish a plan to develop the necessary capacity. Each plan shall be developed in consultation with entities and agencies involved in the individuals' care.

(4) TRAINING.—The department and community-based care lead agencies shall ensure that cases in which there is a substance exposed newborn are assigned to child protective investigators and case managers who have specialized training in working with substance exposed newborns and their families. The department and lead agencies shall ensure that child protective investigators and case managers receive this training before accepting a case.

Section 6. Section 409.16742, Florida Statutes, is created to read:

409.16742 Shared family care residential services program for substance exposed newborns.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is evidence that, with appropriate support and training, some families can remain safely together without court involvement or traumatic separations. Therefore, it is the intent of the Legislature that alternative types of placement

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options be available which provide both safety for substance exposed newborns and an opportunity for parents recovering from substance abuse disorders to achieve independence while living together in a protective, nurturing family environment.

(2) ESTABLISHMENT OF PILOT PROGRAM.—The department shall establish a shared family care residential services program to serve substance exposed newborns and their families in the Fourth Judicial Circuit through a contract with the designated lead agency established in accordance with s. 409.987 or with a private entity capable of providing residential care that satisfies the requirements of this section. The private entity or lead agency is responsible for all programmatic functions necessary to carry out the intent of this section. As used in this section, the term "shared family care" means out-of-home care in which an entire family in need is temporarily placed in the home of a family who is trained to mentor and support the biological parents as they develop caring skills and supports necessary for independent living.

(3) SERVICES.—The department shall specify services that should be made available to newborns and their families through the pilot program.

Section 7. For the 2017-2018 fiscal year, the sum of \$750,000 in recurring funds is appropriated from the General Revenue Fund to the Department of Health for the purpose of implementing the HLARC program. These funds do not supplant or reduce any other appropriation of state funds to family planning providers or to the department for family planning services.

Section 8. The Legislature finds that this act is necessary to protect the public health, safety, and welfare.

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Section 9. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 Nov 17

Meeting Date

1400

Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall
City

FL
State

32301
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1400
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 21, 2017
TIME: 4:00—6:00 p.m.
PLACE: 401 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

CourtSmart Tag Report

Room: SB 401
Caption: Senate Committee on Children, Families, and Elder Affairs

Case No.:

Type:
Judge:

Started: 3/21/2017 4:04:58 PM
Ends: 3/21/2017 5:07:17 PM **Length:** 01:02:20

4:05:00 PM Meeting Called to Order
4:05:14 PM Roll Call by AA
4:05:38 PM Quorum Present
4:06:25 PM Tab 2 SB 492 Sen Young explains
4:07:25 PM AA Bc
4:07:28 PM Sen Young waives the clsoe
4:07:38 PM Anmend adopted
4:07:57 PM Smat just alliance waives in support
4:08:04 PM Sen Young waives close
4:08:13 PM Roll Call by AA Nikky Lowrey
4:08:32 PM CS/SB reportred favorably
4:08:47 PM Recording Paused
4:13:36 PM Recording Resumed
4:13:46 PM Meeting reconvened
4:14:59 PM SB 1092 Sen Gainer explains
4:16:07 PM BC 644966 Sen Gainer explains
4:16:34 PM Call for questions
4:16:42 PM Amend adopted w/o objections
4:16:51 PM Sen Gainer waives close
4:16:55 PM SB 1092 Sen Gainer
4:17:25 PM Tab 9 SB 1094 Sen Gainer explains
4:18:33 PM Chair calls for questions and public testimony
4:18:48 PM Bareny Bishop, waives in support
4:19:05 PM Stefan Vaughn, Okaloosa County Department of Corrections, waives in support
4:19:15 PM Sarah Busk
4:19:21 PM Roll Call
4:19:24 PM SB 1094 reported favorably
4:19:31 PM Tab 1 SB 286 Sen Steube along with Bill co-founder NatalieMcCaire King explain
4:22:27 PM Question
4:22:31 PM Public Testimony
4:22:36 PM Nicole Gariney
4:22:46 PM Bareny Bishop, waives in support
4:22:53 PM Erin Choy, Waives in support
4:23:05 PM Babara Devaine, WIS
4:23:55 PM Babara Devaine, former educator, speaks in support
4:26:05 PM Amber Kelly waives in support
4:27:06 PM Cynthia Schwartz, waives in supoport
4:27:29 PM Jan Edwards, waives in support
4:28:07 PM Roll Call SB 286
4:28:26 PM SB 286 reported favorably
4:28:42 PM Sen Campbell acknowledged
4:29:28 PM Tab 10 SB 1392 Sen Latvala explains

4:30:37 PM Sen Latvala explains the strike all
4:31:38 PM Amend adopted w/o objection
4:31:47 PM Bareny Bishop waives in support
4:31:58 PM Sen Latvala waives close
4:32:09 PM Roll call on SB 1392
4:32:48 PM Quroum lost
4:33:01 PM Quroum regained
4:33:05 PM SB 1392 reported favorably
4:33:13 PM Tab 11 SB 1400 Sen Grimsley
4:34:01 PM A 278262 withdrawn
4:34:24 PM Barney Bishop waives in support
4:34:39 PM Roll Call SB 1400
4:34:47 PM SB 1400 reported favorably
4:34:59 PM Tab 7 SB 924 Sen Rousson explains
4:35:46 PM Amened explained by Sen Rouson and it is adopted
4:36:12 PM Sen Rouson further explains bill
4:37:50 PM Chair calls for questions
4:38:00 PM Sen Rouson waives to close
4:38:21 PM Roll call
4:38:28 PM SB 924 reported favorably
4:38:46 PM Dave Aronberg, State Attorney 15th Circuit speaking in support
4:38:50 PM Speaker
4:45:26 PM Questions
4:46:21 PM Chair Garcia question
4:47:03 PM Speaker
4:47:50 PM Sen Torres question
4:49:24 PM Speaker
4:49:34 PM SB 788 Sen Clemmons explains the bill
4:51:19 PM Chair calls for questions
4:51:43 PM Richard Pinsky, City of Lake Worth, waives in support
4:51:52 PM Lisa Hurley, FI association of counties, waives in support
4:54:55 PM Cary Clickstein, Mayor of Delray Beach speaks in support
4:55:59 PM Sen question
4:56:53 PM Mayor Clickstein comments
4:59:33 PM Al Johnson waives in support
4:59:49 PM Daphne Sainvil, Broward Co, waives in support
4:59:56 PM Devon West, Martin Co, waives in support
5:00:01 PM Rebecca Delarosa, Palm Beach County, waives in support
5:00:08 PM Bareny Bishop waives in support
5:00:47 PM Chair comments
5:01:32 PM Sen Clemmons comments
5:03:20 PM roll Call SB 788
5:03:28 PM CS/SB 788 reported favorably
5:03:42 PM SB 510 and 518 tped
5:03:52 PM Sen Torres voted in affirmative on bills
5:04:27 PM Sen Artilles votes in the affirmative
5:05:14 PM Meeting adjourned

PALM BEACH COUNTY SOBER HOMES TASK FORCE REPORT
IDENTIFICATION OF PROBLEMS IN THE SUBSTANCE ABUSE TREATMENT AND
RECOVERY RESIDENCE INDUSTRIES WITH RECOMMENDED CHANGES TO
EXISTING LAWS AND REGULATIONS

JANUARY 1, 2017

BACKGROUND AND SCOPE

Florida is in the midst of an opioid crisis. Although South Florida has experienced the worst of this crisis, it is present and growing in other areas of the State. The crackdown on pill mills dispensing opioid drugs, such as oxycodone and hydrocodone, has contributed to the rise in heroin addiction. The introduction of synthetic opiates such as fentanyl (100 times more potent than morphine), and carfentanil (1000 times more potent than Morphine), puts Florida on a pace to double the number of overdose deaths over last year's horrific numbers. Federal laws, including the Mental Health Parity and Addiction Equity Act of 2008 and the Affordable Care Act of 2012, have dramatically increased required insurance coverage for behavioral health issues, including substance abuse treatment. Children remain on their parents' Insurance policies until age 26 and pre-existing conditions may no longer be excluded from coverage. Young adults with a Substance Use Disorder (SUD) are being marketed to Florida's recovery residences, also known as sober homes, and substance abuse treatment providers by the thousands, and many in this vulnerable class are being exploited and abused. The lack of effective oversight of this industry, especially in the private sector, has allowed bad actors to flourish, significantly contributing to the rising death toll.

The Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) have combined to limit government oversight of recovery residences that house persons recovering from SUDs. Florida has become a medical vacation destination as desperate parents continue to send their adult children to Florida for treatment. The flood of out-of-state patients, with insurance covering more lucrative out-of-network programs, has created a billion-dollar industry in Florida, with little oversight.

Recognizing the problem, the Florida Legislature asked Dave Aronberg, State Attorney for the 15th Judicial Circuit, to form a Task Force to study the issue and recommend changes to Florida law and administrative rules to combat this crisis. Mr. Aronberg established three groups. First, a Law Enforcement Task Force to investigate and arrest the rogue players in the treatment and recovery residence industries, using current laws. These coordinated law enforcement efforts have also helped to identify the strengths and weaknesses of existing criminal laws. Second, a Proviso Task Force, including members of organizations named in the legislative proviso, was created to study the issues and make specific recommendations for positive change through legislation and regulatory enhancements. Lastly, a third, larger and more inclusive group, was created from a broad-based combination of industry representatives, public officials, private organizations and individuals to further study the problem and recommend solutions. The following report reflects the findings of the study and contains a number of recommendations endorsed by the two Task Force groups. The recommendations in this report reflect the overwhelming consensus of the groups although there was not unanimous agreement on all recommendations outlined in the report.

The economic environment of substance abuse treatment in Florida, primarily in the private sector, creates the opportunity for abuse: overbilling for services, most notably confirmatory and quantitative urinalysis testing (UA); marketing abuses; patient brokering; unregulated “flop houses” masquerading as sober homes and a system that encourages relapse. There is an incentive for marketers to refer patients to an out-of-network program, resulting in more referrals of out-of-state patients to providers in Florida. Out-of-network providers are generally not bound by contract to a set fee schedule for services. Thus, there is an economic incentive for providers who are not bound by pre-set charges to treat out-of-network patients. In a recent Optum report, it was estimated that insurance company reimbursement for out-of-network drug treatment was, on average, three times the amount paid for the same in-network

services.¹ That same study showed that 75% of private sector patients actively being treated in Florida are from out-of-state.

There are a number of causes contributing to the explosive expansion of this tragic opioid epidemic. A Florida Department of Law Enforcement study in conjunction with the Medical Examiners Commission, released in September 2016, aptly shows that this is not solely a Palm Beach County, or South Florida crisis. Statewide, in 2015, heroin caused 733 deaths,² fentanyl, 705, oxycodone, 565, and hydrocodone, 236. Deaths caused by heroin increased by 79.7 percent, and fentanyl by 77.6 percent statewide when compared with 2014. Total deaths in 2015 with morphine detected, 1,483; fentanyl detected, 911; heroin, 779.³ All indications are that the statewide death toll for 2016 will be significantly higher. According to the Palm Beach County Medical Examiner's Office, there have been 377 opiate overdose deaths in Palm Beach County alone through September 2016.

In addition to the terrible cost in human life, there are public costs, including the psychological toll on our community of first responders. Through October 24, 2016, Palm Beach County Fire Rescue (PBCFR) reported over 3,000 overdose responses, with more than 1 in 10 resulting in death. Police and Fire departments have routinely engaged mental health professionals to assist first responders in dealing with the crisis. The cost of an average PBCFR "run" is between \$1,000 and \$1,500. Ten years ago, the average dose of Narcan required to reverse an overdose was .5 mg. Today, it is not uncommon for first responders to administer 10 mg. due to the higher potency of fentanyl and carfentanil.

¹ Optum; *Young Adults and the Behavioral Health System*.

² *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2015 Annual Report, FDLE (September 2016) (for counties with over twenty cases detected with heroin alone, Palm Beach County (165), Orlando (108), Ft. Lauderdale (80), Ft. Myers (43), Sarasota (68), Jacksonville (45), Pensacola (28), Miami (92), Tampa (35), Daytona Beach (20)).

³ *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2015 Annual Report, FDLE (September 2016).

SUMMARY

The Legislature needs to recognize that the substance abuse treatment industry is a part of the healthcare system. Currently, there is little oversight of the industry,⁴ other than licensing as a right, unlike other areas of healthcare licensed and regulated by the Department of Health (DOH) and Agency for Health Care Administration (AHCA).⁵ Recovery residences, connected to treatment providers by commerce, housing vulnerable patients engaged in intensive outpatient treatment, currently are not regulated at all. All too often, the result is the warehousing of patients in unlicensed, unregulated, substandard housing that encourages anything but sobriety. It is imperative that the Department of Children and Families (DCF) be given the mandate and resources to effectively oversee both treatment providers and recovery residences connected through commerce to the providers. Sober housing for patients involved in intensive outpatient treatment is akin to Adult Family Care Facilities (AFC) in that these homes also house disabled individuals that require care and assistance. Increased oversight of this billion-dollar industry can be financed primarily through reasonable licensing fees and other fees for service. By allowing the industry to fund regulation through reasonable fees, to provide for DCF services and FARR certification for commerce-related recovery residences, it will become much more difficult for bad actors to thrive.

Marketing is another unregulated area that contributes to this crisis. No marketing norms or standards exist within the industry. Marketers and admissions personnel are not required to obtain licensing or certification. There is no minimum education, training or experience required. Some marketers create an online presence whereby potential patients and their families are willfully mislead and misdirected by unqualified individuals who offer

⁴ It is important to note that a different level of oversight exists between the private treatment system and the publically funded system. Providers publically funded by DCF through a contract with a Managing Entity have annual program reviews, are required to have a consumer complaint system, have contract obligations related to quality of care, and are actively investigated if misrepresentation or fraud is indicated.

⁵ § 429.01(3), Fla. Stat. (2016) ("the principle that a license issued under this part is a public trust and a privilege and is not an entitlement . . .").

diagnoses and placement recommendations. Often the result of these “lead generators” is a referral to a provider in Florida. In many cases, the referral is to a treatment center or recovery residence in Florida that is not the original destination requested or sought by the caller. To protect the vulnerable consumer, minimum marketing standards need to be developed by DCF, including education, training, licensing and certification by the Florida Certification Board (FCB). In addition, an ethics in marketing statute would be helpful to provide guidance in this area of the industry. Lastly, knowing, intentional and material misrepresentations should be criminalized.

While this crisis cannot be eliminated through criminal investigation and prosecution alone, law enforcement requires more effective tools than are currently available. The Task Force has attached several specific recommendations: greater penalties and other enhancements to the patient brokering statute; enactment of a fraud statute specific to intentional and knowing material misrepresentations by marketers; requirement that any recovery residence referral, either to or from a provider, be by or to a recovery residence that is certified by a credentialing entity (currently FARR) and managed by a certified recovery residence administrator (currently FCB).

To allow for a more efficient and effective response to criminal wrongdoing within the treatment and recovery residence industries, funding should be made available for training local law enforcement agencies and prosecutors to more effectively navigate privacy concerns, while investigating and prosecuting persons or entities who engage in patient brokering and other fraudulent activities. Additionally, the jurisdiction of the Attorney General’s Office of Statewide Prosecution should be expanded to add patient brokering to the list of prosecutable crimes as well as inclusion on the predicate list for the purpose of Racketeering (RICO) prosecution. Lastly, investigating cases involving behavioral health⁶ is extremely difficult. Florida privacy laws requiring prior notice of disclosure of records should adopt the same

⁶ § 397.501(7)(a)5, Fla. Stat. (2016); 42 U.S.C. § 290dd-2(b)(C)(disclosure of records), 42 C.F.R. § 2.17(a) and 42 C.F.R. § 2.67 (undercover operations).

federal exception for ongoing investigations, allowing patient notice to be given after an investigation, but before records are released to the public.

For purposes of this report, the Task Force has determined that there is a vast difference between a classic recovery residence and a commercial recovery residence. A classic recovery residence or sober home is a grouping of like-minded individuals who choose to live together in a sober environment. In most cases, the residents are all signatories of any lease agreement. In this regard, a recovery residence generally does not house persons who require intensive outpatient treatment or higher level of care. More importantly, a recovery residence, in this context, does not have an ongoing economic relationship with a treatment provider.

When referring to a commercial recovery residence, the Task Force is limiting the discussion and its legislative and regulatory recommendations to those commercial residences that are owned or operated either by a treatment provider or another third party, are engaged in commerce with a treatment provider, and house a vulnerable class of recovering addicts attending intensive outpatient programs. This is an important distinction. All recovery residences, as a grouping of disabled persons choosing to live a sober lifestyle together as a group, are protected by federal law from discrimination. However, the commerce between commercial recovery residences and treatment providers can and should be regulated. Commercial recovery residences, engaged in commerce with treatment providers, require regulation, not for the purpose of limiting or restricting them, but rather to protect this vulnerable class of disabled persons from exploitation and abuse. For the remainder of this report, the Task Force will be identifying statutory clarifications and enhancements to existing law as they pertain to treatment providers and commercial recovery residences only.

A number of specific written statutory recommendations are attached to this report. There are other important issues, including fundamental changes to DCF's role in cleaning up the industry, that have not been reduced to specific written statutory language. We urge the Legislature to develop and enact legislation in keeping with the recommendations of the Task Force. Most significantly, the Legislature must create a statutory structure that adequately

funds DCF, funds a credentialing entity for commercial recovery residences (currently FARR), and gives DCF the authority to effectively regulate and license these businesses.

We acknowledge and applaud the recent Palm Beach County Grand Jury Presentment on these issues. Many of the recommendations published in the Presentment are adopted by this Task Force. The Presentment is attached to this report. (Attachment #1).

IDENTIFICATION OF ABUSES IN THE INDUSTRY AND RECOMMENDED SOLUTIONS

THE ROLE OF DCF

As of August 31, 2016, there were a total of 931 substance abuse treatment providers licensed in Florida, holding 3,417 separate component (program) licenses.⁷ The Southeast Region (Palm Beach, Broward and the Treasure Coast had 321 licensed providers, (34% of providers) holding 1307 component licenses (38% of all licenses). From April-July, 2016, the Southeast Region alone received 241 Provider Application Packets for the licensure of 606 program components (63 from new providers). The DCF Southeast Region Office of Substance Abuse and Mental Health currently has 9 licensing specialists. The total number of licensing specialists in the 6 DCF state regions combined is 25. Licensing specialists also have the duty and obligation to perform any monitoring of programs in addition to processing licenses and license renewals. Experience shows that DCF rarely moves to revoke the license of a treatment provider. The lack of resources and statutory limitations have undermined DCF's ability to monitor treatment providers. For example, unlike AHCA or the Managing Entity, which oversees state funded providers under contract, DCF personnel do not have the ability or resources to make unannounced auditing visits. Additional staff and authority would allow the Department to be more effective when investigating complaints and enforcing laws against a problem provider.

⁷ Information provided by DCF to the Palm Beach County Recovery Residences Task Force.

- The Task Force recommends adoption of language as applied to AHCA in the Assisted Living Facilities Act⁸, making licenses for substance abuse treatment providers and recovery residences engaged in commerce with those providers a privilege, rather than a right, for purposes of licensure and enforcement of standards. As with AHCA, DCF should be given greater ability to monitor and effectively investigate complaints, as well as license. Chapter 397 should include provisions allowing DCF greater flexibility to deny or delay the issuance of licenses where there are concerns with compliance. For example, when a license is revoked or surrendered, a significant time period should be required before a provider may re-apply. Re-application should require greater scrutiny.
- Additionally, DCF should be given the ability to license commercial recovery residences engaged in commerce with treatment providers. Licensing should encompass more than just safety issues such as fire code compliance. DCF should have the ability to require significant protocols be followed, akin to those utilized by AHCA for the oversight of ALF and AFC licenses.
- Require DCF to develop standards, similar to the National Alliance of Recovery Residences (NARR) standards, which must be met by applicants prior to issuing a license to the commercial recovery residence.
- Marketing practices standards should be included in the requirements for all components of licenses. Standards should address advertising, internal and external admissions and call centers, staff training, minimum qualifications and compensation, referrals of patients the center cannot accept, and compliance with the Florida Patient Brokering Act.

⁸ § 429.01(3), Fla. Stat. (2016).

- Create and nationally advertise a hotline for DCF to investigate complaints against treatment providers and commercial recovery residences in Florida. A separate investigative division should be established to monitor compliance as well as marketing abuses.

At the present time, DCF funding is barely sufficient to process provider and component licenses. Increased funding is imperative. That funding can be made revenue neutral. Adequate funding for DCF can be achieved through an increase in fees for non-public licensed providers and commercial recovery residences. This includes reasonable fees for licensing, ongoing oversight of licensed components, including monitoring of compliance with housing standards and protocols, adequate investigative resources, and robust enforcement of standards, including license revocation. The industry can well afford increased fees sufficient to provide for adequate staffing. Staffing is needed not only for licensing and renewals, but regular auditing, investigation and legal staff to pursue license revocation, if appropriate. As a billion-dollar industry, substance abuse treatment providers should be willing and easily able to absorb the level of scrutiny that will curb the abuses that are currently all too prevalent, and preventable. It is in their best interest to rid the State of those rogue operators who “body snatch” patients from legitimate providers and recovery residences.

- Expand the role of DCF to more effectively monitor and investigate abuses, including consumer complaints, in the substance abuse treatment and commercial recovery residence industries.
- Provide adequate revenue-neutral funding through reasonable increases in licensing fees and fees for service.

PATIENT BROKERING

Due to the fact that most private patients are from out-of-state, treatment providers in Florida often refer them to recovery residences or accept referral from recovery residences to their treatment facilities. A common practice within the industry in Florida is for the treatment

provider to pay a weekly fee or kickback to the recovery residence, with the understanding that the recovery residence will allow the patient to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program. This practice was developed, in part, to ensure that out-of-state patients have a local place to live after they step down from inpatient to outpatient treatment. Most out-of-state patients who are attending intensive outpatient treatment are not locally employed, and while some are able to pay rent, many do not have the means. Without a local, stable address, it would be difficult, if not impossible, for a provider to treat the patient. This creates economic pressure for the provider to find a way to house the patient locally. Brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace. Some treatment providers and recovery residences offer incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more. Brokers known as "body snatchers" will approach an individual with an SUD and convince them to move to another recovery residence or treatment provider that offers "better stuff."

As a result of patient brokering, there exists an economic incentive for both the patient and the provider to recycle through treatment. Often insurers are required to cover each relapse as a separate event (analogous to breaking a leg one week, and an arm the next). Therefore, a relapse is an event that triggers the cycle of coverage anew. For example, if a patient's benefits expire after inpatient treatment, followed by 8 weeks of outpatient treatment, a new series of benefits are triggered upon relapse, resulting in the patient being eligible for additional treatment, its level and length dependent upon the policy terms. As a result, there is an economic incentive for bad actors in the industry to encourage relapse. It is not uncommon for a person to be in this cycle of treatment/relapse for years. All too often, this cycle ends in overdose and death.

Regulating the type of residence that houses vulnerable persons undergoing intensive outpatient treatment, where there is an economic nexus between provider and residence, does not violate the rights of the patients under the ADA or FHA, any more than does AHCA licensing and regulating housing of disabled and elderly residents at an AFC. The purpose is to protect

disabled persons from being exploited or abused. The purpose is to ensure that patients are living in a safe environment that encourages recovery. Any residence that does not have an economic connection to a treatment provider would not be subject to DCF licensing requirements or be required to be FARR certified. It is the economic connection and protection of patients that enables oversight.⁹

Right now, it is a violation of the patient brokering statute to offer or pay any commission, bonus, rebate, kickback, or bribe, "directly or indirectly," in cash or in kind, or engage in any split-fee arrangement, "in any form whatsoever," to induce the referral of patients or patronage to or from a health care provider. § 817.505(1)(a), Fla. Stat. (2016). It is also a violation to solicit or receive the benefits described above (1) "in return for referring patients or patronage to or from a health care provider" or (2) "in return for the acceptance or acknowledgment of treatment from a health care provider." § 817.505(1)(b)-(c), Fla. Stat. The model upon which the industry currently rests is illegal. Artifices such as "case management agreements," "bona fide employee" and marketing agreements are generally transparent attempts to evade prosecution. A kickback is a kickback.

If the Legislature chooses to recognize the reality that out-of-state private pay and insured patients require housing while attending intensive outpatient levels of care, and that it is in the public interest that treatment providers be allowed to subsidize that housing without being in violation of the patient brokering statute, then there must be mandatory, effective, meaningful oversight and control over the housing component.

- The problem is so pressing and the ramifications of failure so severe, that the Task Force recommends meaningful DCF oversight and enforcement as well as mandatory credentialing (currently FARR certification) for any commercial recovery residence that is allowed to receive a subsidy, directly or indirectly, from the

⁹ See Attachment #3, legal memo by Terrill Pyburn, City Attorney, Coconut Creek.

treatment provider in exchange for referrals to, or from, that provider, or otherwise contracts in any way with a provider.

- The Task Force also recommends that the Legislature adopt changes to § 397.407(11). (Attachment #2). Specifically, a licensed service provider should not be allowed to refer a “prospective, current or discharged patient to, or accept a referral from” a recovery residence unless the recovery residence is certified and actively managed by a certified recovery residence administrator.
- Commercial recovery residences that contract with a service provider, directly or indirectly, need to be licensed and monitored by DCF and be required to maintain identifiable standards, such as those required by AHCA licensed residences, or to maintain standards similar to those required under the National Alliance of Recovery Residences (NARR) platform.
- To avoid the “institutionalization” of patients in recovery, restrict the licensure category for IOP or Day/Night treatment from providing free or subsidized housing to a patient beyond 90 days within one calendar year.
- With regard to the Patient Brokering Statute¹⁰ (Attachment #4), add the word “benefit” to the prohibited items solicited or received in return for patient referrals. In addition, enhanced penalties for multiple brokering offenses are needed, along with significant fines to deter this course of conduct.
- The commercial recovery residence credentialing entity must be adequately funded through increased certification fees and fees for service.

¹⁰ § 817.505, Fla. Stat. (2016).

MARKETING

Currently, there are no provisions in Chapter 397 to control unethical marketing practices that prey on distressed families or individuals in crisis seeking treatment. There are no educational, vocational, licensing or certification requirements for admissions personnel, marketers or advocates in the industry. Patients and their families are routinely misled, misdirected and misdiagnosed by unqualified individuals motivated by profit. The State of Florida licenses haircutters. We must do better in protecting disabled people with substance use disorders.

- A marketer or admissions employee directing patients to specific treatment programs should be required to have certain minimum education and/or certification qualifications and should be prohibited from diagnosing and/or recommending specific levels of care without the appropriate license or certification.
- A marketing entity referring patients to Florida should be required to have a registered agent in the State for service of process.
- The Legislature should enact § 397.55 "Prohibition of Unethical Marketing Practices" (Attachment #5), an ethical marketing statute that would be useful to clarify standards in the industry. This would include appropriate disclaimers.

Certain predatory marketing practices involve fraudulent misrepresentation at a time when potential patients and their loved ones are in crisis and most vulnerable. Marketers who knowingly and willfully make materially false statements, whether in advertising or by direct communication, with current or potential patients, should be held criminally accountable. False statements of material fact may include misleading representation about the "identity, products, goods, services, or geographical location" of a service provider or recovery residence by the marketer or marketing entity.

- The Legislature should enact § 817.0345; "Prohibition of Fraudulent Marketing Practices" (Attachment #6) to criminalize and deter the most serious marketing abuses involving fraudulent representations.

ATTORNEY GENERAL OFFICE OF STATEWIDE PROSECUTION: JURISDICTION

The Office of Statewide Prosecution has jurisdiction over certain crimes when they are committed in multiple circuits. The crimes are set out in statute. Currently, patient brokering is not specifically enumerated. It would enhance law enforcement efforts to combat unlawful patient brokering by providing jurisdiction to the Attorney General in those cases that cross circuit lines.

- The Legislature should amend § 16.56 (Attachment #7) to include patient brokering as a specific offense, enabling the Attorney General to investigate and prosecute this crime.
- The Legislature should amend § 895.02 (Attachment #8) to add patient brokering to the predicate offenses constituting "racketeering activity" enabling the Attorney General to investigate and prosecute criminal enterprises that commit these crimes in one or more circuits.

IMPEDIMENTS TO EFFECTIVE PROSECUTION: RECOMMENDATIONS

Criminal cases in Florida are investigated by law enforcement and submitted to the state attorney for the filing of criminal charges. The privacy protections afforded by both federal and state law for the protection of persons being treated for behavioral health conditions significantly impacts the ability of law enforcement to effectively investigate in these areas. For example, an officer is at risk of violating privacy laws by walking up to a known recovery residence and asking routine questions of the residents such as whether and where they receive treatment.

Commencing an undercover operation of a treatment provider or recovery residence requires prior court approval. This is known as a "Title 42" order. It is time consuming and

costly. The patient notification requirements under State law are unclear as to when such notification is required. As a result, one Palm Beach County Circuit Judge refused to sign a requested "Title 42" preliminary order without prior notification to all patients, who were unknown at the time. The average law enforcement agency simply does not have the resources to develop these kinds of extensive investigations within their jurisdictions.

Most criminal investigations are initiated by a complaint; a car is stolen, a person is battered, etc. But the abuses in the drug treatment industry, particularly patient brokering, are not likely to come to light through a person with direct knowledge of these illegal practices. Patients, providers and recovery residence operators are all complicit in patient brokering. For example, there is no incentive for a patient who is benefiting from the arrangement to come forward and initiate a complaint. Therefore, the privacy issue is compounded by the lack of direct complaints and cooperation by this vulnerable class.

- The Task Force recognizes that there are impediments to prosecution that are based on federal law. The difficulties and expense of effective investigation into the abuses of the treatment industry underscore the need for better oversight of providers and recovery residences. There is a legislative cure for the inconsistency between federal and state law regarding adequate notice to the patient. § 397.501 Rights of Individuals (Attachment #9) should be amended to follow the criteria for the issuance of a preliminary court order by specifically adopting the language found in 42 C.F.R. § 2.66(b).
- In order to enhance law enforcement's ability to investigate abuses within the industry, the Legislature should consider additional state funding for law enforcement training in the areas of patient brokering, marketing and healthcare fraud in the substance abuse treatment industry. Training is necessary to enable smaller agencies and counties/circuits throughout Florida to be able to take on these complex investigations.

STANDARD OF CARE/MEDICAL NECESSITY

Potential abuse has expanded to include confirmatory and quantitative drug testing, DNA, genetic testing, pathology, and any diagnostic test that a physician is privileged to order, including up-coded office visits. A point of care (POC) urinalysis test kit is readily available over the counter and costs a few dollars. Confirmatory testing at a laboratory involves sophisticated instruments, often tests for specific and collateral drugs (panels) and routinely results in billings of thousands of dollars per sample. In many cases confirmatory testing is ordered by treatment providers multiple times per week. Medical doctors sign off on such testing as medically necessary and, in many cases, major insurance carriers are compelled to pay claims for laboratory testing without prior authorization based on "access to care" requirements found in federal law. In other words, laboratory testing as a complement to clinical care may be routinely billed for without legitimate proof of medical necessity. This is one of the engines that currently run the industry.

While insurance companies generally pay a percentage of the billed amount, it is not unusual for unscrupulous treatment providers to bill tens or hundreds of thousands of dollars in insurance claims for confirmatory and quantitative UA and other laboratory testing for an individual patient over the course of treatment. In many instances, confirmatory test results are never reviewed by the ordering physician. In addition, unscrupulous providers will submit falsely labeled samples purportedly given by active patients. Frequently, a business nexus exists between the owners of treatment programs, recovery residences and drug testing laboratories.

Currently, there is little communication between stakeholders in the areas of medical necessity, insurance fraud and appropriate standards of care. While the market may correct itself to some degree, it is counterproductive if the market over-corrects and persons with substance use disorders are not properly covered and treated. Inadequate treatment will invariably lead to more overdoses, and more deaths.

- The issue of billing for unnecessary treatment that is fraudulent on its face, including urinalysis or other laboratory testing, is covered under current fraud statutes. As a

further deterrent for those bad actors who knowingly and intentionally defraud private payers or insurance companies, the Legislature should consider enhanced penalties based on significant dollar amount thresholds; over \$100,000, \$500,000, \$1,000,000.

- The standard of care involved in substance abuse treatment is not easily defined or universally accepted. The Task Force will continue to study the issue and report any findings or recommendations to the Legislature.
- To facilitate communication between industry and government stakeholders, the Task Force recommends that the Legislature create an ongoing statewide government/private sector panel to examine standard-of-care abuses in the industry, pool resources and share information. The panel should include the Attorney General, Florida Department of Financial Services-Fraud Division (DFS), Department of Business and Professional Regulation, DOH, AHCA, representatives from the insurance industry, the Florida Alcohol and Drug Abuse Association (FADAA), DCF, FARR, doctors and treatment providers, representatives of local government and first responders, among other potential stakeholders. This panel would be tasked with identifying areas of abuse and coordinating efforts within the private industry and government agencies to curb those abuses as well as recommending appropriate action by the Legislature and executive branches.

RECOGNIZING THE NEED FOR ANCILLARY SERVICES AT RECOVERY RESIDENCES

A great deal of discussion among Task Force members has revolved around whether active patients require ancillary services at their recovery residence as part of the continuum of care. The debate does not include substance abuse treatment, which is not recognized as a function of the residence. Ancillary services could include assistance with transportation, obtaining government benefits, obtaining a job, obtaining a driver's license, life skills training, and overall support in a sober environment. The Task Force will continue to study this issue and will report its findings to the Legislature.

ALTERNATIVES TO DCF LICENSING OF RECOVERY RESIDENCES: AHCA

As an alternative agency to DCF, and in addition to mandatory FARR certification for patient housing connected by commerce to treatment providers, there is an argument to be made that AHCA should license commercial recovery residences with patients engaged in active intensive treatment. This type of license would be similar to a license for an Adult Family Care Home (AFC).

At the very least, AHCA licensure may be considered if a recovery residence supervises one or more residents who receive medication assisted treatment (MAT). Under such circumstances, the Recovery Residence appears to meet the definition of an ALF, which already requires licensure by AHCA.¹¹

The reasoning behind mandatory licensure for ALFs equally applies to Recovery Residences. The purpose of the Assisted Living Facilities Act “is to promote the availability of appropriate service for . . . adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote dignity, individuality, privacy, and decision making ability of such persons, to provide for the health, safety, and welfare of residents . . . , to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such

¹¹ “Assisted living facility” means any building . . . which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.” § 429.02(5), Fla. Stat. (2016). “Personal services” means . . . supervision of the activities of daily living and the self-administration of medication and other similar services . . .” § 429.02(17), Fla. Stat. (2016). “Supervision” means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.” § 429.02(24), Fla. Stat. (2015). “Activities of daily living” means functions and tasks for self care . . .” § 429.02(1), Fla. Stat. (2015).

residents, and to ensure that needed economic , social, mental health, health, and leisure services are made available to residents . . . through the efforts of [AHCA] [DCF], [DOH], assisted living facilities, and other community agencies.” § 429.01(2), Fla. Stat. (2014).

CONCLUSION

The addiction treatment industry in Florida has a long history of providing quality care and effective treatment. There is a recent trend by unethical providers, however, to exploit the patients they serve and to use the lack of effective oversight to promote patient brokering, excessive billing of services, and inappropriate patient care. This report is written to address systemic problems in the system, created by some, and it should not be assumed these abuses are practiced by all providers.

Many individuals, both Floridians and patients from out of state, find long-term recovery as a result of their engagement in substance abuse treatment. While there are many reputable treatment providers who have a long history of delivering quality care, the reputation of the industry has been negatively affected, and the well-being of patients jeopardized, by a number of providers who have used their license to provide treatment as a means to deliver inadequate care, put patients at risk, use unethical marketing and brokering practices, and practice fraud. This proliferation of fraud and abuse within the substance abuse treatment and recovery residence industries requires immediate attention by the Legislature. Currently, there is very little oversight of providers and no oversight of most recovery residences. Creating a vibrant, adequately funded system of oversight through either DCF or AHCA is crucial. The funding can and should be acquired through increased licensing fees and fees for service, which would make the enhancement revenue neutral. In addition, recovery residences engaged in commerce with treatment providers need to be certified and managed by a certified recovery residence administrator.

Certain law enforcement measures will be helpful to both deter criminality and assist law enforcement in its investigation of patient brokering. The Legislature needs to address abuses in marketing by criminalizing material misrepresentations. Referrals to and from

treatment providers and commercial recovery residences should be allowed only when the recovery residence is certified by a credentialing entity. Jurisdiction should be given to the Attorney General to criminally prosecute patient brokering that occurs across multiple circuits.

Aggressive law enforcement efforts alone will not eliminate all the industry bad actors, any more than criminalizing grand theft auto has eliminated all car thefts. Without bold action the problem will certainly worsen. Currently, paying rent and amenities for patients in order to induce the patient to use a particular provider constitutes patient brokering. If the Legislature recognizes the need to permit treatment providers to subsidize recovery residences housing patients in IOP and day/night treatment programs, those commercial recovery residences need to be both licensed by DCF or AHCA and certified by a credentialing entity. One way this can be achieved is through the creation by DCF of a community residential overlay license connected to intensive outpatient treatment components. A provider may only provide rent subsidy to a recovery residence under this dual system of licensure, along with certification of the residence, and for a limited time.

Marketers and admission personnel should be licensed and subject to marketing standards developed by the Legislature. The most egregious material misrepresentations should be criminalized. The Task Force will continue to study the industry standards and will be making further recommendations regarding marketing and treatment personnel qualifications and appropriate standard of care issues.

The Legislature should create a statewide panel of public and private stakeholders to share information and recommend ongoing improvements in substance abuse treatment industry standards.

While the problems identified in this report have a significant impact on the Southeast part of the state, the Task Force has found that these practices also occur in other communities across Florida. The goal of this report is to ensure that all patients receive quality treatment without being subject to fraud or abuse. The Task Force encourages swift and decisive action by the Legislature.